



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1904 and 1952

[Docket No. OSHA-2013-0023]

RIN 1218-AC49

Improve Tracking of Workplace Injuries and Illnesses

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: The purpose of this rulemaking is to improve workplace safety and health through the collection of useful, accessible, establishment-specific injury and illness data to which OSHA currently does not have direct, timely, and systematic access. With the information acquired through this proposed rule, employers, employees, employee representatives, the government, and researchers will be better able to identify and abate workplace hazards. OSHA is proposing to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under OSHA's regulations for recording and reporting occupational injuries and illnesses. The proposed rule amends the regulation on the annual OSHA injury and illness survey of ten or more employers to add three new electronic reporting requirements. The proposed rule does not add to or change any employer's obligation to complete and retain injury and illness records under OSHA's

regulations for recording and reporting occupational injuries and illnesses. The proposed rule also does not add to or change the recording criteria or definitions for these records. The proposed rule only modifies employers' obligations to transmit information from these records to OSHA or OSHA's designee.

DATES: Comments: Comments must be submitted by [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments: You may submit comments, identified by docket number OSHA-2013-0023, or regulatory information number (RIN) 1218-AC49, by any of the following methods:

Electronically: You may submit comments electronically at <http://www.regulations.gov>, which is the federal e-rulemaking portal. Follow the instructions on the website for making electronic submissions;

Fax: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA docket office at (202) 693-1648;

Mail, hand delivery, express mail, messenger, or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket Number OSHA-2013-0023, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and docket office's normal business hours, 8:15 a.m. – 4:45 p.m.

Instructions for submitting comments: All submissions must include the docket

number (Docket No. OSHA-2013-0023) or the RIN (RIN 1218-AC49) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA docket office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service.

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download submissions in response to this Federal Register notice, go to docket number OSHA-2013-0023, at <http://regulations.gov>. All submissions are listed in the <http://regulations.gov> index. However, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA docket office.

Electronic copies of this Federal Register document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, is available at OSHA's website at <http://www.osha.gov>.

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SUPPLEMENTARY INFORMATION: OSHA is proposing to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under OSHA's regulations for recording and reporting occupational injuries and illnesses. This proposed rule would amend the regulation on the annual OSHA injury and illness survey of ten or more employers to add three new electronic reporting requirements. First, OSHA will require establishments that are required to keep injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses, and that had 250 or more employees in the previous year, to electronically submit information from these records to OSHA or OSHA's designee on a quarterly basis. Second, OSHA will require establishments that are required to keep injury and illness records under OSHA's regulations for recording and reporting occupational injuries and illnesses, had 20 or more employees in the previous year, and are in certain designated industries to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee on an annual basis. The second submission requirement will replace OSHA's annual injury and illness survey, authorized by the current version of the regulation. Third, OSHA will require all employers who receive notification from OSHA to electronically submit specified information from their Part 1904 injury and illness records to OSHA or OSHA's designee.

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I. Legal Authority

OSHA is issuing this proposed rule pursuant to authority expressly granted by sections 8 and 24 of the Occupational Safety and Health Act (the "OSH Act" or "Act") (29 U.S.C. 657, 673). Section 8(c)(1) requires each employer to "make, keep and preserve, and make available to the Secretary [of Labor] or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary

. . . may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses" (29 U.S.C. 657(c)(1)). Section 8(c)(2) directs the Secretary to prescribe regulations "requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job" (29 U.S.C. 657(c)(2)). Finally, section 8(g)(2) of the OSH Act broadly empowers the Secretary to "prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under this Act" (29 U.S.C. 657(g)(2)).

Section 24 of the OSH Act (29 U.S.C. 673) contains a similar grant of authority. This section requires the Secretary to "develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics" and "compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses . . ." (29 U.S.C. 673(a)). Section 24 also requires employers to "file such reports with the Secretary as he shall prescribe by regulation" (29 U.S.C. 673(e)). These reports are to be based on "the records made and kept pursuant to section 8(c) of this Act" (29 U.S.C. 673(e)).

Further support for the Secretary's authority to require employers to keep and submit records of work-related illnesses and injuries can be found in the Congressional Findings and Purpose at the beginning of the OSH Act (29 U.S.C. 651). In this section, Congress declares the overarching purpose of the Act to be "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions" (29

U.S.C. 651(b)). One of the ways in which the Act is meant to achieve this goal is "by providing for appropriate reporting procedures...[that] will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

The OSH Act authorizes the Secretary of Labor to issue two types of occupational safety and health rules: standards and regulations. Recordkeeping requirements promulgated under the Act are characterized as regulations (*see* 29 U.S.C. 657 (using the term "regulations" to describe recordkeeping requirements)). Standards aim to correct particular identified workplace hazards, while regulations further the general enforcement and detection purposes of the OSH Act (e.g., Workplace Health & Safety Council v. Reich, 56 F.3d 1465, 1468 (D.C. Cir. 1995) (citing Louisiana Chemical Ass'n, 657 F.2d 777, 781-82 (5th Cir. 1981)); United Steelworkers of America v. Auchter, 763 F.2d 728, 735 (3d Cir. 1985)).

This proposed regulation does not infringe on employers' Fourth Amendment rights. The Fourth Amendment protects against searches and seizures of private property by the government, but only when a person has a "legitimate expectation of privacy" in the object of the search or seizure (Rakas v. Illinois, 439 U.S. 128, 143-47 (1978)). There is little or no expectation of privacy in records that are required, by the government, to be kept and made available (Free Speech Coalition v. Holder, 729 F.Supp.2d 691, 747, 750-51 (E.D. Pa. 2010) (citing cases); U.S. v. Miller, 425 U.S. 435, 442-43 (1976); *cf.* Shapiro v. U.S., 335 U.S. 1, 33 (1948) (no Fifth Amendment interest in required records)). Accordingly, the Fourth Circuit held, in McLaughlin v. A.B. Chance, that an employer has little expectation of privacy in the records of occupational injuries and

illnesses kept pursuant to OSHA regulations, and must disclose them to the Agency on request (842 F.2d 724, 727-28 (4th Cir. 1988)).

Even if there were an expectation of privacy, the Fourth Amendment prohibits only unreasonable intrusions by the government (Kentucky v. King, 131 S.Ct. 1839, 1856 (2011)). The proposed information submission requirement is reasonable. The requirement serves a substantial government interest in the health and safety of workers, has a strong statutory basis, and rests on reasonable, objective criteria for determining which employers must report information to OSHA (see New York v. Burger, 482 U.S. 691, 702-703 (1987)). See the discussion in sections I, above, and II.d., below.

OSHA notes that two courts held, contrary to A.B. Chance, that the Fourth Amendment required prior judicial review of the reasonableness of an OSHA field inspector's demand for access to injury and illness logs before the agency could issue a citation for denial of access (McLaughlin v. Kings Island, 849 F.2d 990 (6th Cir. 1988); Brock v. Emerson Elec. Co., 834 F.2d 994 (11th Cir. 1987)). Those decisions are inapposite here. The courts based their rulings on a concern that field enforcement staff had unbridled discretion to choose the employers and circumstances in which they would demand access. The Emerson Electric court specifically noted that in situations where "businesses or individuals are required to report particular information to the government on a regular basis[,] a uniform statutory or regulatory reporting requirement [would] satisf[y] the Fourth Amendment concern regarding the potential for arbitrary invasions of privacy" (834 F.2d at 997, fn.2). This proposed rule, like that hypothetical, would establish general reporting requirements based on objective criteria and would not vest field staff with any discretion. The employers that are required to report data, the

information they must report, and when they must report it are clearly identified in the text of the rule and in supplemental notices that will be published pursuant to the Paperwork Reduction Act. The proposed rule is similar in these respects to the existing rule that authorizes reporting pursuant to the OSHA Data Initiative and is reasonable under the Fourth Amendment (see 62 Fed. Reg. 6434, 6437-38 (Feb. 11, 1997) for a discussion of Fourth Amendment issues in the final rule on Reporting Occupational Injury and Illness Data to OSHA).

II. Background

OSHA estimates that this rule will have economic costs of \$11.9 million per year, including \$10.5 million per year to the private sector, with costs of \$183 per year for affected establishments with 250 or more employees and \$9 per year for affected establishments with 20 or more employees in designated industries. The Agency believes that the annual benefits, while unquantified, significantly exceed the annual costs.

Benefits include:

- Better compliance with OSHA's statutory directive "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651(b)) "by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

- Increased workplace safety as a result of expanded OSHA access to timely, establishment-specific injury/illness information. OSHA access to this information will allow OSHA to use its resources more effectively by enabling the Agency to identify the workplaces where workers are at greatest risk, in general and/or from specific hazards, and to target its compliance assistance and enforcement efforts accordingly.
- Increased workplace safety as a result of making timely, establishment-specific injury/illness information public and easily available to employers. Public access to this information will encourage employers to maintain and improve workplace safety/health in order to support their reputations as good places to work and/or do business with. Employers will also be able to compare their own injury/illness rates to those of other employers.
- Increased workplace safety as a result of making timely, establishment-specific injury/illness information public and easily available to employees, employee representatives, and potential employees. Public access to this information will allow current employees to compare their workplaces to the best workplaces for safety and health and will allow potential employees to make more informed decisions about potential places of employment.
- Increased workplace safety as a result of making timely, establishment-specific injury/illness information public and easily available to customers and potential customers. Public access to this information will allow members of the public to make more informed decisions about current and potential companies with which to do business.

- Improved research on occupational safety and health. Public access to timely, establishment-specific injury and illness information will allow researchers to identify patterns of injuries or illnesses that are masked by the aggregation of injury/illness data in existing data sources.

a. Recordkeeping Rule

In 1971, OSHA promulgated 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (Part 1904). This rule requires the recording of work-related injuries and illnesses that involve death, loss of consciousness, days away from work, restriction of work, transfer to another job, medical treatment other than first aid, or diagnosis of a significant injury or illness by a physician or other licensed health care professional (29 CFR 1904.7).

Between 1994 and 2001, OSHA completely revised Part 1904. Amended recordkeeping regulations went into effect in 1994 (Reporting fatalities and multiple hospitalization incidents to OSHA, 29 CFR 1904.39) and 1997 (Annual OSHA injury and illness survey of ten or more employers, 29 CFR 1904.41). The bulk of the revisions occurred in 2001, when OSHA issued a final rule amending its requirements for the recording and reporting of occupational injuries and illnesses (29 CFR Parts 1904 and 1952), along with the forms employers use to record those injuries and illnesses (66 Fed. Reg. 5916 (Jan. 19, 2001)).

Under 29 CFR 1904.1 and 1904.2, three categories of employers are required to keep OSHA injury and illness records:

1. Employers under OSHA jurisdiction with 11 or more employees, unless the establishment is classified in a partially-exempt industry (specific low-hazard

retail, service, finance, insurance, or real estate industries, listed in Appendix A to 29 CFR 1904 Subpart B).

2. Employers with ten or fewer employees, if OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records under §1904.41 (Annual OSHA injury and illness survey of ten or more employers) or §1904.42 (Requests from the Bureau of Labor Statistics for data).
3. Establishments in partially-exempt industries, if OSHA or BLS informs them in writing that they must keep records under §1904.41 (Annual OSHA injury and illness survey of ten or more employers) or §1904.42 (Requests from the Bureau of Labor Statistics for data).

The recordkeeping rule currently covers approximately 750,000 employers with approximately 1,500,000 establishments. Under §1904.29, covered employers must complete Form 301 (Injury and Illness Incident Report) for each injury and illness at a covered establishment and record each injury and illness on Form 300 (Log of Work-Related Injuries and Illnesses). In addition, each year, the employers must use the information from these forms to complete Form 300A (Summary of Work-Related Injuries and Illnesses) for each covered establishment.

The records required by the recordkeeping rule provide OSHA and consultants in OSHA's On-Site Consultation Program with important information. However, OSHA currently does not acquire the information in these records unless the establishment receives an inspection or is part of the OSHA Data Initiative.

At the beginning of an inspection, an OSHA representative reviews the establishment's injury and illness records to help focus the inspection on the safety and

health hazards suggested by the records. OSHA consultants conduct a similar review when an establishment has requested a consultation. Also, as discussed below, OSHA currently uses establishment-specific injury and illness information obtained through the OSHA Data Initiative to help target the most hazardous worksites and the worst safety and health hazards. Finally, detailed, aggregate injury and illness data published by the BLS Survey of Injuries and Illnesses help OSHA identify and characterize occupational safety and health problems and allocate enforcement and compliance assistance resources.

b. Data Collections

Currently, two Department of Labor data collections request and compile employers' injury and illness records: the annual OSHA Data Initiative (ODI), conducted by OSHA, and the annual Survey of Occupational Injuries and Illnesses (SOII), conducted by BLS. This rulemaking affects the ODI by replacing the current version of §1904.41. It does not change the authority of the SOII, which is conducted pursuant to §1904.42.

1. OSHA Data Initiative (ODI)

OSHA's mission is to assure safe and healthful working conditions for working men and women. The primary purpose of the ODI is to enable OSHA to focus its efforts on individual workplaces with ongoing serious safety and health problems, as identified by the occupational injury and illness rates at those workplaces. Authority for the ODI comes from §1904.41 (Annual OSHA injury and illness survey of ten or more employers).

The ODI consists of larger establishments (20 or more employees) in the manufacturing industry and in an additional 70 non-manufacturing industries. These are industries with historically high rates of occupational injury and illness. Currently, there are over 160,000 unique establishments that are subject to participation in the ODI. The ODI is designed so that each eligible establishment receives the ODI survey at least once every three-year cycle. Each year, the ODI sends the survey to approximately 80,000 establishments (1.1% of all establishments nationwide), which typically account for approximately 700,000 injuries and illnesses (19% of injuries and illnesses nationwide).

The ODI survey collects the following data from Form 300A (Summary of Work-Related Injuries and Illnesses) from each establishment:

- Number of cases (total number of deaths, total number of cases with days away from work, total number of cases with job transfer or restrictions, and total number of other recordable cases);
- Number of days (total number of days away from work and total number of days of job transfer or restriction);
- Injury and illness types (total numbers of injuries, skin disorders, respiratory conditions, poisonings, hearing loss, and all other illnesses);
- Establishment information (name, street address, industry description, SIC or NAICS code, and employment information (annual average number of employees, total hours worked by all employees last year));
- Signature (company executive's signature, title, telephone number, and date).

Employers may submit their data on paper forms or electronically. OSHA then calculates establishment-specific injury and illness rates and uses them in its Site-Specific Targeting

(SST) enforcement program and High Rate Letter outreach program. The Agency also makes the establishment-specific data available to the public through its website at http://www.osha.gov/pls/odi/establishment_search.html and through President Obama's Open Government Initiative at Data.gov (<http://www.data.gov/raw/1461>).

The proposed rule replaces the ODI with the new language proposed for §1904.41(a)(2). This section will require all establishments that are required to keep injury and illness records under Part 1904, had 20 or more employees in the previous year, and are in certain designated industries to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee on an annual basis.

2. BLS Survey of Occupational Injuries and Illnesses

The primary purpose of the SOII is to provide annual information on the rates and numbers of work-related non-fatal injuries and illnesses in the United States of America, and on how these statistics vary by incident, industry, geography, occupation, and other characteristics. The Confidential Information Protection and Statistical Efficiency Act of 2002 (Publ. Law 107-347, Dec. 17, 2002) prohibits BLS from releasing establishment-specific data to the general public or to OSHA.

Authority for the SOII comes from §1904.42 (Requests from the Bureau of Labor Statistics for data). Each year, BLS collects data from Form 300A (Summary of Work-Related Injuries and Illnesses), Form 301 (Injury and Illness Incident Report), and Form 300 (Log of Work-Related Injuries and Illnesses) from a scientifically-selected probability sample of about 230,000 establishments, covering nearly all private-sector industries, as well as state and local government. Employers may submit their data on

paper forms or electronically. As stated above, the proposed rule will not affect the authority for the SOIL.

c. OSHA Access to Establishment-Specific Injury and Illness Information

OSHA currently is able to acquire establishment-specific injury and illness information directly from employers in three limited ways.

First, OSHA acquires establishment-specific injury and illness information from employers through inspections. OSHA inspectors examine all records kept under Part 1904, including detailed information about specified injuries. However, each year, OSHA inspects only a small percentage of all establishments under OSHA jurisdiction. For example, in 2010, OSHA and its state partners inspected approximately 1% of establishments under OSHA jurisdiction (approximately 98,000 inspections, out of 7.5 million total establishments). Although OSHA does keep some of the Part 1904 records collected during inspections in its enforcement files, the information contained in them is too limited to be used in the ways OSHA expects to use the injury/illness information it will collect under the current proposal.

Second, OSHA acquires establishment-specific injury and illness information from employers through the ODI. However, because the ODI collects only summary data, it does not enable OSHA to identify specific hazards or problems in establishments in the ODI. In addition, the data are not timely. The injury/illness information OSHA uses in each year's Site-Specific Targeting Program comes from the previous year's ODI, which collected injury/illness data from the year before that. As a result, OSHA's targeting is typically based on injury/illness data that are two or three years old. Finally, the group of 80,000 establishments in each year's ODI is not a statistically-representative

sample either of establishments eligible to be included in the ODI or of establishments overall.

Finally, OSHA acquires establishment-specific injury and illness information from employers through §1904.39, which requires employers to report all employee deaths from work-related incidents to OSHA. Employers must also report all multiple-hospitalization events, defined by §1904.39 as in-patient hospitalizations of three or more employees as a result of a work-related incident.

These most-severe workplace injuries and illnesses are fortunately rare. OSHA receives fewer than 2,000 establishment-specific reports of fatalities each year and fewer than 20 establishment-specific reports of multiple-hospitalization events. OSHA responds to each of these reports with an investigation and, as appropriate, an inspection.

On June 22, 2011, OSHA published a Notice of Proposed Rulemaking that would amend the requirements of §1904.39 to require employers to report all work-related in-patient hospitalizations and amputations to OSHA, in addition to all employee deaths (76 Fed. Reg. 36414 (June 22, 2011)). OSHA estimated that the new reporting requirements would result in a total of 210,000 additional establishment-specific reports of these severe injuries to OSHA. Even this larger number of reports, however, would represent less than one in ten of the roughly 3 million annual recordable injury and illness cases. In addition, the data would represent only the most severe injuries.

Given the above, OSHA currently does not acquire establishment-specific injury and illness information from an establishment in a particular year unless the establishment was inspected, was part of the ODI, and/or reported a fatality or multiple-hospitalization event.

As noted above, OSHA also acquires aggregate information from the injury and illness records collected through the BLS SOII. However, SOII data also have a time lag of almost a year, with data for a given year not available until November of the following year. More importantly, the SOII data available to OSHA do not identify the specific establishments where the injuries and illnesses occurred.

d. Benefits of Electronic Data Collection

The main purpose of this rulemaking is to improve workplace safety and health through the collection and use of timely, establishment-specific injury and illness data. With the information acquired through this proposed rule, employers, employees, employee representatives, the government, and researchers will be better able to identify and remove workplace hazards.

The proposed rule will support OSHA's statutory directive to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" (29 U.S.C. 651(b)) "by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

It will greatly expand OSHA's access to the establishment-specific information employers are already required to record under Part 1904. As described in the previous section, OSHA currently does not have timely, systematic access to this information. OSHA has access to establishment-specific injury and illness information in a particular year only if the establishment was inspected, was part of the ODI, and/or reported a fatality or a multiple hospitalization event. In addition, the injury and illness data

collected through the ODI are summary data only and not timely. The fatality/multiple hospitalization event data do not include the establishment's injury and illness records unless OSHA also conducts an inspection.

The rule's provisions requiring regular electronic submission of injury and illness data will allow OSHA to acquire a much larger database of timely, establishment-specific information about injuries and illnesses in the workplace. This information will help OSHA use its resources more effectively by enabling OSHA to identify the workplaces where workers are at greatest risk.

For example, OSHA could refer employers who report high overall injury/illness rates to OSHA's free on-site consultation program. OSHA could also send hazard-specific educational materials to employers who report high rates of injuries or illnesses related to those hazards. OSHA could use the information to identify emerging hazards, support an Agency response, and reach out to employers whose workplaces might include those hazards.

The proposed new collection would provide establishment-specific injury and illness data for analyses that are not currently possible with the data sets from inspections, the ODI, and reporting of fatalities and multiple-hospitalization events. For example, OSHA could analyze the data collected under this proposed system to answer the following questions:

1. What are the lowest injury/illness rates for establishments in a particular high-hazard industry?
2. What are the long-term changes over time in injuries and illnesses in a particular industry?

3. What is the effect of an OSHA intervention program targeted at a particular industry or particular industry-related hazard on injuries/illnesses in that industry?
4. What are the injury/illness outcomes of an OSHA intervention, as determined by a case-control study?
5. What are the common hazards in low-rate establishments compared to high-rate establishments in a particular industry?
6. How do injuries and illnesses in a particular industry vary by season?
7. How do injuries and illnesses in a particular industry vary by geographical location of the establishment?

In addition, OSHA plans to post the injury and illness data online, as encouraged by President Obama's Open Government Initiative (for example, see www.whitehouse.gov/open). The Agency believes that public access to timely, establishment-specific injury and illness data will improve workplace safety and health.

Specifically, the online posting of establishment-specific injury and illness information will encourage employers to improve and/or maintain workplace safety/health to support their reputations as good places to work or do business with. Many corporations now voluntarily report their workplace injury and illness rates in annual "Sustainability Reports", in order to show investors, stakeholders, and the public that they are committed to positive social values, including workplace safety. However, under OSHA's current recording and reporting requirements, employers have access only to their own data, aggregate injury/illness data in the SOII, summary data from establishments in the ODI, and fatality/multiple-hospitalization event reports. Using data collected under the proposed rule, employers could compare injury rates and hazards at

their establishments to those at comparable establishments and set workplace safety/health goals benchmarked to the establishments they consider most comparable.

Online availability of establishment-specific injury and illness information will also encourage employees to contribute to improvements in workplace safety/health. Under §1904.35, employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA injury and illness records at their workplace, with some limitations. They also have access to the limited injury/illness information, discussed above, that is currently available to the public – the aggregate injury/illness data in the SOII, summary data from establishments in the ODI, and fatality/multiple-hospitalization event reports. In addition, §1904.32 requires employers to post a copy of the establishment’s annual summary in each establishment in a conspicuous place where notices to employees are customarily posted. This provision allows employees automatic access to the summary data without requiring employees to request the data from their employer.

Using data collected under the proposed rule, employees would be able to compare their own workplaces to the safest workplaces in their industries. This could encourage employees in more hazardous workplaces to work towards improvements by showing them that the improvements are possible, while demonstrating the results of workplace safety/health efforts to employees in the less-hazardous workplaces. Further, while the current access provisions of the regulation provide employees the right to access the information on the Part 1904 recordkeeping forms, evidence shows that few employees exercise this right. During 2,836 inspections conducted between 1996 and 2011 to assess the injury and illness recordkeeping practices of employers, 2,599 of the

recordkeepers interviewed (92%) indicated that employees never requested access to the records required under Part 1904. OSHA believes that employees will access and make use of the data more frequently when the information is available without having to request the information from their employers. Uninhibited access to the information will allow employees to better identify hazards within their own workplace and to take actions to have the hazards abated.

Potential employees currently have access only to the limited injury/illness information currently available to the public – aggregate injury/illness data in the SOII, summary data from establishments in the ODI, and fatality/multiple-hospitalization event reports. Using data collected under the proposed rule, potential employees could examine the injury and illness records of establishments where they are interested in working, to help them make a more informed decision about a future place of employment. This would also encourage employers with more hazardous workplaces in a given industry to improve workplace safety and health, since potential employees, especially the ones whose skills are most in demand, might be reluctant to work at more hazardous establishments.

The general public also currently has access only to aggregate injury/illness data in the SOII, summary data from establishments in the ODI, and fatality/multiple hospitalization event reports. Using data collected under the proposed rule, members of the public will be able to make more informed decisions about current and potential places to do business with. For example, potential customers might choose to patronize only the businesses in a given industry with the lowest injury/illness rates. Such decisions by customers would also encourage establishments with higher injury/illness rates in a

given industry to improve workplace safety in order to become more attractive to potential customers.

Finally, researchers also currently have access only to the limited injury/illness data described above. Using data collected under the proposed rule, researchers might identify previously unrecognized patterns of injuries and illnesses across establishments where workers are exposed to similar hazards. Such research would be especially useful in identifying hazards that result in a small number of injuries or illnesses in each establishment but a large number overall, due to a wide distribution of those hazards in a particular area, industry, or establishment type. Data made available under the proposed rule may also allow researchers to identify patterns of injuries or illnesses that are masked by the aggregation of injury/illness data in the SOIL.

Workplace safety and health professionals might use data published under the proposed rule to identify establishments whose injury/illness records suggest that the establishments would benefit from their services. In general, online access to this large database of injury and illness information will support the development of innovative ideas for improving workplace safety and will allow everybody with a stake in workplace safety to participate in improving occupational safety and health.

This regulation may also improve the accuracy of the reported data. Section 1904.32 already requires company executives subject to Part 1904 requirements to certify that they have examined the annual summary (Form 300A) and reasonably believe, based on their knowledge of the process by which the information was recorded, that the annual summary is correct and complete. OSHA recognizes that most employers are diligent in complying with this requirement. However, a minority of employers is less diligent; in

recent years, one third or more of violations of §1904.32, and up to one tenth of all recordkeeping (Part 1904) violations, have involved this certification requirement. If this minority of employers knows that their data must be submitted to the Agency and may also be examined by members of the public, they may pay more attention to the requirements of Part 1904, which could lead both to improvements in the quality and accuracy of the information and to better compliance with §1904.32.

Finally, the National Advisory Council on Occupational Safety and Health (NACOSH) has indicated its support of the efforts of OSHA in consultation with NIOSH to modernize the system for collection of injury and illness data to assure that it is timely, complete, and accurate, as well as both accessible and useful to employers, employees, responsible government agencies, and members of the public.

e. Publication of Electronic Data

OSHA intends to make the data it collects public. The publication of specific data elements will in part be restricted by provisions under the Freedom of Information Act (FOIA) and the Privacy Act, as well as specific provisions within Part 1904. OSHA may make the following data from the various forms (Docket exhibit OSHA-2013-0023-0001) available in a searchable online database:

Form 300A (Summary Form) –All data fields could be made available. These data are currently collected under the ODI and during inspections and are released under FOIA requests. The annual summary form is also posted at workplaces under §1904.32(a)(4).and §1904.32(b)(5). OSHA currently posts establishment-specific injury and illness rates calculated from the data collected through the ODI on OSHA’s public

website at http://www.osha.gov/pls/odi/establishment_search.html. Form 300A does not contain any personally identifiable information.

Form 300 (the Log) –Except for Column B (the employee’s name), all fields could be made available. These data are generally released under FOIA requests. Section 1904.29(b)(10) prohibits release of employees’ names and personal identifiers contained in the forms to individuals other than the government, employees, former employees, and authorized representatives. OSHA does not currently conduct a systematic collection of the information on this form. However, the Agency does review the form during inspections and occasionally collects the form for enforcement case files.

Form 301 (Incident Report) –All fields on the right-hand side of the form (items 10 through 18) could typically be made available. These data are generally released in response to FOIA requests. Sections 1904.35(b)(v)(A) and (B) prohibit the release of information in items 1 through 9 to individuals other than the employee or former employee who suffered the injury or illness and his or her personal representatives. OSHA does not currently conduct a systematic collection of the information on this form. However, the Agency does review the form during some inspections and occasionally collects the form for enforcement case files.

It should be noted that other agencies post establishment-specific health and safety data with personal identifiers, including names. For example, the Mine Safety and Health Administration (MSHA) publishes coded information pertaining to each accident, illness, or injury reported to MSHA on MSHA Form 7000-1, including employee gender and age, as well as narratives associated with specific accidents/injuries for a particular year. An example of information published by MSHA can be viewed at

<http://www.msha.gov/drs/drshome.htm>. Further, MSHA publishes a Preliminary Accident Report for fatalities, which includes the employee's name, age, and a description of the accident. MSHA also publishes an Accident Investigation Report that provides the names of other employees involved in the fatal incident.

The Federal Railroad Administration (FRA) posts headquarters-level Accident Investigation Reports filed by railroad carriers under 49 U.S.C. §20901 or made by the Secretary of Transportation under 49 U.S.C. §20902; in the case of highway-rail grade crossing incidents, these reports include personally-identifiable information (age and gender of the person(s) in the struck vehicle).

Finally, the Federal Aviation Administration (FAA) posts National Transportation Safety Board (NTSB) reports about aviation accidents. These reports include personally-identifiable information about employees, including job history and medical information. OSHA invites public comment on which data reported under the proposed rule it would be useful to publish as part of OSHA's online database of establishment-specific injury and illness information. OSHA also invites public comment on whether there are additional steps the Agency should take to protect employee privacy interests.

III. Stakeholder Meetings and Public Comments

To help OSHA gather information about electronic submission of establishment-specific injury and illness data, OSHA held one stakeholder meeting in Washington, D.C., on May 25, 2010, and two in Chicago, Illinois, on June 3, 2010.

Topics included:

- Scope of the data to be collected

- Uses of the data to be collected
- Methods of data collection
- Economic impacts

In addition, as part of the stakeholder meeting notification, OSHA requested public comment. Comments were submitted for Docket No. OSHA-2010-0024. Summaries of the stakeholder meetings are available on OSHA's Recordkeeping Page at

<http://www.osha.gov/recordkeeping/stakeholdermeeting.html> and under Docket No.

OSHA-2010-0024 at <http://www.regulations.gov>. Major points brought up by individual stakeholders include:

- As long as the data submission process is simple and straightforward, an OSHA requirement for electronic submission of information from injury and illness records will not be a burden for most large employers, because large employers already keep their records electronically.
- The electronic submission system must be easy to use and should be compatible with workers' compensation systems and data submittal for the SOII.

IV. Summary and Explanation of the Proposed Rule

OSHA is proposing to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under Part 1904. The proposed rule would amend 29 CFR §1904.41 to add three new electronic reporting requirements (proposed §1904.41 – Electronic submission of injury and illness records to OSHA).

First, OSHA will require establishments that are required to keep injury and illness records under Part 1904, and had 250 or more employees in the previous calendar year, to electronically submit information from these records to OSHA or OSHA's designee, on a quarterly basis (proposed §1904.41(a)(1) – Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees).

Second, OSHA will require establishments that are required to keep injury and illness records under Part 1904, had 20 or more employees in the previous calendar year, and are in certain designated industries, to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee, on an annual basis (proposed §1904.41(a)(2) – Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries). The second submission requirement will replace OSHA's annual illness and injury survey, authorized by the current version of 29 CFR 1904.41.

Third, OSHA will require all employers who receive notification from OSHA to electronically submit specified information from their Part 1904 injury and illness records to OSHA or OSHA's designee (proposed §1904.41(a)(3) – Electronic submission of Part 1904 records upon notification).

a. Description of Proposed Revisions

1. §1904.41(a)(1) – Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees

OSHA proposes to add a requirement that establishments with 250 or more employees (including full-time, part-time, temporary, and seasonal workers) at any time during the previous calendar year must electronically submit to OSHA or OSHA's

designee, on a quarterly basis, all information from the records that they keep under Part 1904. This information includes the individual entries on the OSHA Form 300 and the information entered on each OSHA Form 301. The summary data from OSHA Form 300A will be submitted annually. This requirement will not apply to establishments with 250 or more employees that are partially exempt from keeping injury and illness records under §1904.2 (Partial exemption for establishments in certain industries). OSHA has preliminarily determined that it is appropriate to require quarterly data submission from establishments with 250 or more employees. The Agency believes that these establishments will find quarterly submission to be a relatively small burden, when compared to the benefits to worker safety and health that frequent submission can provide.

OSHA will provide a secure website for the data collection. Employers will register their establishments and be assigned a login ID and password. The website will allow for both direct data entry and submission of data through a batch file upload, as appropriate. OSHA invites public comment on the design of the electronic reporting system and the implementation of the electronic reporting requirement.

The proposed rule does not add to or change any employer's obligations to complete and retain the injury and illness records. Part 1904 already requires employers at establishments with 250 or more employees to keep injury and illness records, unless they are exempt under §1904.2 (Partial exemption for establishments in certain industries). The proposed rule also does not add to or change the recording criteria or definitions for these records. The only difference between the proposed rule and the current rule is that employers who keep injury and illness records under Part 1904, and

had 250 or more employees at any time in the previous calendar year, will have to submit their records electronically, to OSHA or OSHA's designee, on a quarterly basis.

2. §1904.41(a)(2) – Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries

OSHA proposes to add a requirement that establishments with 20 or more employees, in designated industries, must electronically submit the information from the OSHA summary form (Form 300A) to OSHA or OSHA's designee, on an annual basis. This will replace the current requirement in §1904.41(a) that employers that receive OSHA's annual survey form must fill it out and send it in. The requirement for the information from the OSHA annual summary form (Form 300A) will replace the data requirements listed separately in current §1904.41(a)(1) (number of workers employed), §1904.41(a)(2) (number of hours worked by employees), and §1904.41(a)(3) (requested information from Part 1904 records).

OSHA has chosen to require annual submission of Form 300A data from these establishments, as opposed to annual or quarterly submission of Form 300 and Form 301 data, because it recognizes that more frequent submissions of more data would impose an additional burden on these establishments, some of which may not have on-site access to the Internet. The Agency believes that annual submission of Form 300A data will provide researchers with valuable data from these establishments in a relatively timely manner.

OSHA will provide a secure website for the data collection. Employers will register their establishments and be assigned a login ID and password. The website will allow for both direct data entry and submission of data through a batch file upload, as

appropriate. OSHA invites public comment on the design of the electronic reporting system and the implementation of the electronic reporting requirement.

The designated industries represent all industries covered by Part 1904 with a 2009 Days Away From Work, Job Restriction, or Job Transfer (DART) rate in the BLS SOII of 2.0 or greater, excluding four selected transit industries where local government is a major employer. On average, establishments in these industries experience 2 or more serious injuries and illnesses per 100 full time employees. The designated industries, which will be published as Appendix A to Part 1904 Subpart E, will be as follows:

<u>NAICS</u>	<u>Industry</u>
11	Agriculture, Forestry, Fishing and Hunting
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale Trade
4413	Automotive Parts, Accessories, and Tire Stores
4421	Furniture Stores
4422	Home Furnishings Stores
4441	Building Material and Supplies Dealers
4442	Lawn and Garden Equipment and Supplies Stores
4451	Grocery Stores
4521	Department Stores
4529	Other General Merchandise Stores
4533	Used Merchandise Stores

4543	Direct Selling Establishments
4811	Scheduled Air Transportation
4832	Inland Water Transportation
4841	General Freight Trucking
4842	Specialized Freight Trucking
4855	Charter Bus Industry
4871	Scenic and Sightseeing Transportation, Land
4872	Scenic and Sightseeing Transportation, Water
4881	Support Activities for Air Transportation
4882	Support Activities for Rail Transportation
4883	Support Activities for Water Transportation
4884	Support Activities for Road Transportation
4889	Other Support Activities for Transportation
4921	Couriers
4922	Local Messengers and Local Delivery
4931	Warehousing and Storage
5152	Cable and Other Subscription Programming
5311	Lessors of Real Estate
5321	Automotive Equipment Rental and Leasing
5322	Consumer Goods Rental
5323	General Rental Centers
5617	Services to Buildings and Dwellings
5621	Waste Collection

5622	Waste Treatment and Disposal
5629	Remediation and Other Waste Management Services
6216	Home Health Care Services
6221	General Medical and Surgical Hospitals
6222	Psychiatric and Substance Abuse Hospitals
6223	Specialty (except Psychiatric and Substance Abuse) Hospitals
6231	Nursing Care Facilities
6232	Residential Mental Retardation, Mental Health and Substance Abuse Facilities
6233	Community Care Facilities for the Elderly
6239	Other Residential Care Facilities
6243	Vocational Rehabilitation Services
7112	Spectator Sports
7131	Amusement Parks and Arcades
7132	Gambling Industries
7211	Traveler Accommodation
8113	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance
8123	Drycleaning and Laundry Services

The proposed rule does not add to or change any employer's obligations to complete and retain the injury and illness records. Part 1904 already requires employers at establishments with 20 or more employees to keep injury and illness records, including the OSHA summary unless they are partially-exempt under §1904.2 (Partial exemption)

for establishments in certain industries). None of the designated industries is partially-exempt under §1904.2 (Partial exemption for establishments in certain industries). The proposed rule also does not add to or change the recording criteria or definitions for these records. The only difference between the proposed rule and the current rule is that establishments that keep injury and illness records under Part 1904, had 20 or more employees in the previous year, and are in the designated industries, will have to submit the information from the OSHA annual summary form (Form 300A) electronically, to OSHA or OSHA's designee, once a year.

As stated above, the industry list for this proposed section of the rule is based on an analysis of CY 2009 BLS DART rates. More current BLS injury and illness data will be available at the time of the final rulemaking. When developing the final rule, OSHA intends to use the most current BLS data available for determining the final industry coverage. See section IV.b.3 of this preamble for a solicitation for comment on this issue.

3. §1904.41(a)(3) – Electronic submission of Part 1904 records upon notification

OSHA proposes to add a requirement that all employers who receive a notification from OSHA must submit information from their Part 1904 injury and illness records electronically to OSHA or OSHA's designee, for the time period and at the intervals specified by the notification. Employers will not have to submit injury and illness data to OSHA under this section unless they are notified.

OSHA will announce individual data collections through publication in the Federal Register and the OSHA newsletter and through announcements on its website. Establishments that are required to submit the data will also be notified by mail.

Each notification will be part of an individual data collection designed to obtain specified injury and illness data from a specified group of employers at a specified time interval. Individual data collections will provide OSHA with the timely, establishment-specific information necessary for identifying emerging hazards, characterizing specific areas of concern, or targeting inspections and outreach activities under an OSHA emphasis program.

The individual data collection might be limited. For example, to obtain information on occupational skin disorders in summer road construction, OSHA might request all Form 301 data for recordable skin disorder cases in establishments in the highway, street, and bridge construction industry (NAICS 23731) in June, July, and August of a particular year.

The data collection could also be more general. For example, OSHA might request all of the data recorded under Part 1904 from establishments in the primary metals industry (NAICS 331) in the past year.

OSHA will provide a secure website for the data collection. The data collection notification will provide the location of the website and will ask notified employers to register their establishments for the specified data collection. OSHA will assign employers with registered establishments a login ID and password for that data collection. The website will allow for both direct data entry and submission of data through a batch file upload, as appropriate. OSHA invites public comment on the design of the electronic reporting system and the implementation of the electronic reporting requirement.

For each new data collection conducted under this proposed section, the Agency will request OMB approval under separate Paperwork Reduction Act (PRA) control numbers. OSHA currently uses this process for the ODI data collection conducted under the current §1904.41, which OMB currently approves under the control number 1218-0209.

The proposed rule does not add to or change any employer's obligation to complete and retain injury and illness records under Part 1904 (approved by OMB under Control Number 1218-0176 "Recordkeeping and Reporting Occupational Injuries and Illnesses (29 CFR Part 1904)"). Employers that are required to keep injury and illness records under Part 1904 will not have to keep any additional records as a result of this proposed rule. Employers that are normally exempt from keeping injury and illness records under §1904.1 (Partial exemption for employers with 10 or fewer employees) and/or §1904.2 (Partial exemption for establishments in certain industries) are already required by the current version of §1904.41 (Annual OSHA injury and illness survey of ten or more employers) to keep records if OSHA informs them in writing to do so, and the proposed rule continues this requirement.

The proposed rule also does not add to or change the recording criteria or definitions for these records. The only difference between the proposed rule and the current rule is that notified employers will have to submit the requested records electronically.

4. §1904.41, Paragraphs (b)(1)-(b)(6)

These parts of the proposed rule answer the following questions:

- Does every employer have to send data to OSHA (§1904.41, Paragraph (b)(1))?

- How will I be notified that I have to submit the data (§1904.41, Paragraph (b)(2))?
- How often do I have to submit the data (§1904.41, Paragraph (b)(3))?
- How do I submit the data (§1904.41, Paragraph (b)(4))?
- Do I have to submit data if I am normally exempt from keeping OSHA injury and illness records (§1904.41, Paragraph (b)(5))?
- Do I have to submit data if I am located in a State-Plan State (§1904.41, Paragraph (b)(6))?

5. §1952.4(d)

OSHA proposes to revise this section, currently related to State participation in the Annual OSHA Injury/Illness Survey as authorized by the current §1904.41, to state that Federal OSHA will collect the data as described in §1904.41(a) through (c) and make the data available to the States and to stipulate that States must adopt identical requirements for enforcement purposes. This revision is proposed to align with the proposed revisions of §1904.41(a), §1904.41(b), and §1904.41(c), as explained above. This is consistent with §18(c)(7) of the OSH Act, which requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect. Section 18(c)(8) of the OSH Act provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

b. Issues, Alternatives, and Questions

1. Issues

Section 8(g) of the OSH Act, which authorizes OSHA to issue recordkeeping and other regulations, also provides that “(t)he Secretary and Secretary of Health and Human Services are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section” (29 U.S.C. §657(g)(1)). OSHA currently publishes, on OSHA.gov, establishment-level injury and illness statistics gathered under the annual ODI survey. To make these data useful to employers, employees, and the public in dealing with safety and health issues, OSHA intends to continue to make selected data from the new electronic reporting requirements available on OSHA.gov.

Proposed new provisions would require certain employers to electronically submit their illness and injury information to OSHA. OSHA invites public comment on the implementation of the electronic submission requirement, including whether it should take effect immediately or be phased in over a certain period of time at the beginning. Employer-maintained OSHA Form 300 logs are already subject to public disclosure under 29 CFR 1904.35(a)(2), which requires these logs to be disclosed to employees and their representatives, except that details of certain “privacy concern” cases may be kept confidential (see §1904.29(b)(6)-(9)). OSHA 301 forms, which contain more detail about individual injuries, are available only to the injured employees or their representatives.

OSHA currently intends to make public all of the collected data that neither FOIA, the Privacy Act, nor specific Part 1904 provisions prohibit from release. However, OSHA welcomes public input on the question of which categories of information, from which OSHA-required form, it would be useful to publish. Whichever body of data is presented, however, OSHA will ensure that the names of employees with recorded

injuries or illnesses are removed from any published information. OSHA invites public comment on whether there are additional steps the Agency should take to protect employee privacy interests.

The information required to be submitted under the proposed rule is not of a kind that would include confidential commercial information. The information is limited to the number and nature of injuries or illnesses experienced by employees at particular establishments, and the data necessary to calculate injury/illness rates, i.e., the number of employees and the hours worked at an establishment. Details about a company's products or production processes are not included on the OSHA recordkeeping forms, nor do the forms request financial information. The basic employee safety and health data required to be recorded do not involve trade secrets, and public availability of such information would not enable a competitor to obtain a competitive advantage. Many employers already routinely disclose the number of employees at an establishment. As the court noted in New York Times Co. v. U.S. Dept. of Labor, most employers do not view injury/illness rates as confidential (340 F.Supp.2d 394, 403 (S.D.N.Y. 2004)). Further, §1904.32(a)(4) already requires information about number of employees and hours worked to be publicly disclosed to employees through the posting of the OSHA Form 300A (annual summary form) in the workplace, and the release of this information does not cause competitive harm (New York Times Co., 340 F.Supp.2d at 401-403). The Secretary has carefully considered this question following the decision in the New York Times Co. case, and has concluded that the information contained on the OSHA recordkeeping forms does not constitute confidential commercial information. Members of the public are invited to express their views on this issue during the comment period.

2. Alternatives

OSHA considered the following alternatives.

i. Alternative A – Monthly submission under proposed §1904.41(a)(1)

The proposed §1904.41(a)(1) requires quarterly submission from establishments with 250 or more employees. OSHA considered requiring monthly submission instead. Monthly submission would provide more timely data. On the other hand, this alternative would increase the reporting burden on employers at these establishments by increasing the number of times required to log in to the data collection system from four to twelve. Note that this alternative would not change the amount of data that employers would be required to report, but merely how often they would be required to report the data. OSHA welcomes public comment on this alternative.

ii. Alternative B – Annual submission under proposed §1904.41(a)(1)

The proposed §1904.41(a)(1) requires quarterly submission from establishments with 250 or more employees. OSHA considered requiring annual submission instead. Annual submission would reduce the reporting burden on employers at these establishments by decreasing the number of times required to log into the data collection system from four to one. Note that this alternative would not change the amount of data that employers would be required to report, but merely how often they would be required to report the data.

On the other hand, this alternative would reduce the timeliness of the data. First, cases from the beginning of the year would not be reported until the end of the year. Second, receiving, cleaning, and analyzing the submission of a year's worth of data all at once, rather than at regular intervals during the year, would affect OSHA's ability to

make the data available to the public in a timely fashion. OSHA welcomes public comment on this alternative.

iii. Alternative C – One-year phase-in of electronic reporting under proposed §1904.41(a)(1)

The proposed §1904.41(a)(1) requires electronic reporting for establishments with 250 or more employees. OSHA considered a phase-in of the electronic reporting requirement, under which these establishments would have the option of submitting data on paper forms for the first year this proposed rule was in effect. A one-year phase-in would give time for these establishments to adjust to electronic reporting.

On the other hand, according to information provided by stakeholders at the stakeholder meetings held by OSHA in 2010, almost all establishments of this size are already maintaining their Part 1904 records electronically. (For a summary of stakeholder information, see the comments submitted for Docket No. OSHA-2010-0024. Also, summaries of the stakeholder meetings are available on OSHA's Recordkeeping Page at <http://www.osha.gov/recordkeeping/stakeholdermeeting.html> and under Docket No. OSHA-2010-0024 at <http://www.regulations.gov>.)

As a result, if OSHA's electronic data submission system is designed to be compatible with other electronic systems that track and report establishment-specific injury and illness data, these establishments are unlikely to need the adjustment period this alternative would provide. In addition, paper submission would impede OSHA's ability to make the data public in timely way, because the data on the paper forms would have to be entered manually into the electronic data system. OSHA welcomes public comment on this alternative.

iv. Alternative D – Three-year phase-in of electronic reporting under proposed §1904.41(a)(2)

The proposed §1904.41(a)(2) requires electronic reporting for establishments with 20 or more employees in designated industries. OSHA considered a phase-in of the electronic reporting requirement, under which these establishments would have the option of submitting data on paper forms for the first three years this proposed rule was in effect. A three-year phase-in would give time for these establishments to adjust to electronic reporting. On the other hand, paper submission would impede OSHA's ability to make the data public in timely way, because the data on the paper forms would have to be entered manually into the electronic data system. OSHA welcomes public comment on this alternative. It should be noted the current ODI allows for both paper and electronic submission. Approximately 30% of respondents submit their data by paper. This level of paper submission has been consistent for the past three years.

v. Alternative E – Widen the scope of establishments required to report under proposed §1904.41(a)(1)

The proposed §1904.41(a)(1) applies to establishments with 250 or more employees. OSHA considered widening the scope of establishments required to report under this proposed section to establishments with 100 or more employees. This would more than triple the number of establishments required to report under this proposed section, increasing the number from 38,000 to 129,000. It would increase the number of injury and illness cases with incident report (OSHA Form 301) and Log (OSHA Form 300) data by nearly 50%, from 890,000 to 1,325,000.

This alternative would greatly increase the amount of timely, establishment-specific injury/illness information available to the public. On the other hand, it would also greatly increase the number of establishments subject to the burden of quarterly reporting of records kept under Part 1904. OSHA welcomes public comment on this alternative.

vi. Alternative F – Narrow the scope of establishments required to report under proposed §1904.41(a)(1)

The proposed §1904.41(a)(1) applies to establishments with 250 or more employees. OSHA considered narrowing the scope of establishments required to report under this proposed section to establishments with 500 or more employees. This would decrease the number of establishments required to report under this proposed section by more than half, reducing the number from 38,000 to 13,800. It would also decrease the number of injury and illnesses cases with incident report (OSHA Form 301) and Log (OSHA Form 300) data by a third, from 890,000 to 590,000.

This alternative would greatly reduce the number of establishments subject to the burden of quarterly reporting of records kept under Part 1904. On the other hand, it would also greatly reduce the amount of timely, establishment-specific injury/illness information available to the public. OSHA welcomes public comment on this alternative.

vii. Alternative G - Three-step process of implementing the reporting requirements under proposed §1904.41(a)(1) and (2)

OSHA considered a three-step process of implementing the reporting requirements under the proposed §1904.41(a)(1) and (2).

The proposed §1904.41(a)(1) applies to establishments with 250 or more employees, except establishments that are partially exempt from keeping injury and illness records under current §1904.2 (partial exemption for establishments in certain industries).

The proposed §1904.41(a)(2) applies to establishments with 20 or more employees in designated industries, i.e., high-hazard industry groups (classified at the four-digit level in the North American Industry Classification System (NAICS)) and/or high-hazard industry sectors (classified at the two-digit level in NAICS). (Note that, by definition, none of these establishments would be partially exempt under §1904.2.)

For this proposed alternative, high-hazard industry groups (four-digit NAICS) have rates of injuries and illnesses involving days away from work, restricted work activity, or job transfer (DART) that are greater than 2.0. High-hazard industry sectors (two-digit NAICS) include agriculture, forestry, fishing, and hunting; utilities; construction; manufacturing; and wholesale trade.

In the first step of this three-step implementation process, reporting would be required only from the establishments in proposed §1904.41(a)(1) and (2) that are in high-hazard industry groups (four-digit NAICS with a DART rate greater than or equal to 2.0).

Thus, initially, reporting would be required from two categories of establishments:

1. Establishments with 250 or more employees, in a high-hazard industry group (four-digit NAICS). An establishment with 250 or more employees that is not in a high-hazard industry group (four-digit NAICS) would not be required to report.

2. Establishments with 20 or more employees, in a high-hazard industry group (four-digit NAICS). An establishment that had 20 or more employees and is in a high-hazard industry sector (two-digit NAICS), but not in a high-hazard industry group (four-digit NAICS), would not be required to report.

In the second step of the three-step implementation process, OSHA would conduct an analysis, after a specified period of time, to assess the effectiveness, adequacy, and burden of the reporting requirements in the first step. The results of this analysis would then guide OSHA's next actions. For example, the results might support expanding the requirements to include all of the establishments in proposed §1904.41 (a)(1) and (2). Alternatively, the results might support modifying or eliminating the requirements for certain groups of employers or industries.

The third step of the three-step implementation process would therefore depend on the results of OSHA's analysis. For the purposes of this alternative, OSHA assumes that the third step would require reporting from all of the establishments in proposed §1904.41 (a)(1) and (2). That is, the third step would add reporting from two categories of establishments:

1. Establishments with 250 or more employees that are not in high-hazard industry groups (four-digit NAICS) and are not partially-exempt. Establishments with 250 or more employees that are in high-hazard industry groups (two-digit NAICS) would already be reporting under the first step.
2. Establishments with 20 or more employees that are in high-hazard industry sectors (two-digit NAICS) but are not in high-hazard industry groups (four-digit NAICS).

Establishments with 20 or more employees that are in high-hazard industry groups (four-digit NAICS) would already be reporting under the first step.

This three-step alternative would initially focus the regulation more narrowly on establishments in the highest-hazard industries. During the first step, the number of reporting establishments with 250 or more employees would be over two-fifths less (22,000 establishments, compared to 38,000 in proposed §1904.41(a)(1)), and the number of reporting establishments with 20 or more employees in designated industries would be one-quarter less (335,000 establishments, compared to 440,000 in proposed §1904.41(a)(2)).

On the other hand, this alternative would also initially reduce the public's access to timely, establishment-specific injury/illness information about the two categories of establishments that would not be required to report until the third step of the process, depending on the results of the analysis in the second step. There would be 16,000 establishments subject to proposed §1904.41(a)(1) that would not report until the third step, and there would be 105,000 establishments subject to proposed §1904.41(a)(2) that would not report until the third step.

In addition, the three-step implementation process would place a burden of uncertainty on these establishments, which would not be required to report under the first step but might be required to report under the third step, depending on the results of the analysis in the second step.

OSHA welcomes public comment on this alternative.

viii. Alternative H – Narrow the scope of the reporting requirements under proposed §1904.41(a)(1) and (2)

The proposed §1904.41(a)(1) applies to all establishments with 250 or more employees in all industries covered by the recordkeeping rule.

The proposed §1904.41(a)(2) applies to establishments with 20 or more employees in designated industries, i.e., high-hazard industry groups (classified at the four-digit level in the North American Industry Classification System (NAICS)) and/or high-hazard industry sectors (classified at the two-digit level in NAICS). High-hazard industry groups (four-digit NAICS) are defined as industries with rates of injuries and illnesses involving days away from work, restricted work activity, or job transfer (DART) that are greater than or equal to 2.0. High-hazard industry sectors (two-digit NAICS) include agriculture, forestry, fishing, and hunting; utilities; construction; manufacturing; and wholesale trade.

An alternative approach to defining the industry scope of these two sections is to limit the industry coverage to include only industry groups that meet a designated DART cut-off. This approach would not include coverage of designated industry sectors as a criterion. Thus, reporting would be required from two categories of establishments:

1. Establishments with 250 or more employees, in a high-hazard industry group (four-digit NAICS) (quarterly reporting). An establishment with 250 or more employees that is not in a high-hazard industry group (four-digit NAICS) would not be required to report.
2. Establishments with 20 or more employees, in a high-hazard industry group (four-digit NAICS) (annual reporting). An establishment with 20 or more employees that is not in a high-hazard industry group (four-digit NAICS), would not be required to report.

This alternative would focus the regulation more narrowly on establishments in the highest-hazard industries. Using this approach, OSHA applied cut-off DART rates of 2.0 and 3.0 to 2009 BLS and CBP data and calculated the following coverage:

	Establishments with 20 or more employees	Establishments with 250 or more employees	Injuries and illnesses in establishments with 250 or more employees
Proposed regulatory text	440,000	38,000	890,000
DART ≥ 2.0	335,000	22,000	667,000
DART ≥ 3.0	152,000	10,000	229,000

Using a DART rate cut-off of 2.0, the following 55 industry groups that are subject to §1904.41(a)(1) and §1904.41(a)(2) under the main proposal would not be covered under this alternative:

2009 DART < 2.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
1131	Timber Tract Operations	1.7
1132	Forest Nurseries and Gathering of Forest Products	1.7
1133	Logging	1.9
1141	Fishing	0.7
1142	Hunting and Trapping	0.5
2211	Electric Power Generation, Transmission and Distribution	1.5
2362	Nonresidential Building Construction	1.7
2372	Land Subdivision	0.8
2379	Other Heavy and Civil Engineering Construction	1.4
3122	Tobacco Manufacturing	1.9
3131	Fiber, Yarn, and Thread Mills	1.6
3132	Fabric Mills	1.4
3141	Textile Furnishings Mills	1.9
3149	Other Textile Product Mills	1.9
3151	Apparel Knitting Mills	1.5

2009 DART < 2.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
3152	Cut and Sew Apparel Manufacturing	1.3
3159	Apparel Accessories and Other Apparel Manufacturing	1.6
3169	Other Leather and Allied Product Manufacturing	1.7
3221	Pulp, Paper, and Paperboard Mills	1.4
3231	Printing and Related Support Activities	1.6
3241	Petroleum and Coal Products Manufacturing	0.9
3251	Basic Chemical Manufacturing	1.1
3252	Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing	1.4
3253	Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing	1.8
3254	Pharmaceutical and Medicine Manufacturing	1.1
3255	Paint, Coating, and Adhesive Manufacturing	1.9
3259	Other Chemical Product and Preparation Manufacturing	1.3
3274	Lime and Gypsum Product Manufacturing	1.6
3311	Iron and Steel Mills and Ferroalloy Manufacturing	1.8
3322	Cutlery and Handtool Manufacturing	1.8
3332	Industrial Machinery Manufacturing	1.6
3333	Commercial and Service Industry Machinery Manufacturing	1.9
3335	Metalworking Machinery Manufacturing	1.7
3336	Engine, Turbine, and Power Transmission Equipment Manufacturing	1.5
3341	Computer and Peripheral Equipment Manufacturing	0.4
3342	Communications Equipment Manufacturing	0.8
3343	Audio and Video Equipment Manufacturing	0.6
3344	Semiconductor and Other Electronic Component Manufacturing	0.9
3345	Navigational, Measuring, Electromedical, and Control Instruments Manufacturing	0.8
3346	Manufacturing and Reproducing Magnetic and Optical Media	1.1

2009 DART < 2.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
3352	Household Appliance Manufacturing	1.7
3359	Other Electrical Equipment and Component Manufacturing	1.6
3364	Aerospace Product and Parts Manufacturing	1.8
3391	Medical Equipment and Supplies Manufacturing	1.2
4232	Furniture and Home Furnishing Merchant Wholesalers	1.6
4234	Professional and Commercial Equipment and Supplies Merchant Wholesalers	1.1
4236	Electrical and Electronic Goods Merchant Wholesalers	1.0
4237	Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers	1.5
4238	Machinery, Equipment, and Supplies Merchant Wholesalers	1.6
4241	Paper and Paper Product Merchant Wholesalers	1.7
4242	Drugs and Druggists' Sundries Merchant Wholesalers	1.4
4243	Apparel, Piece Goods, and Notions Merchant Wholesalers	1.1
4246	Chemical and Allied Products Merchant Wholesalers	1.6
4247	Petroleum and Petroleum Products Merchant Wholesalers	1.8
4251	Wholesale Electronic Markets and Agents and Brokers	1.0

Using a DART rate cut-off of 3.0, the following 133 industry groups that are subject to §1904.41(a)(1) and §1904.41(a)(2) under the main proposal would not be covered under this alternative:

2009 DART < 3.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
1113	Fruit and Tree Nut Farming	2.6

2009 DART < 3.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
1114	Greenhouse, Nursery, and Floriculture Production	2.7
1119	Other Crop Farming	2.2
1121	Cattle Ranching and Farming	2.7
1122	Hog and Pig Farming	2.8
1124	Sheep and Goat Farming	2.8
1125	Aquaculture	2.8
1131	Timber Tract Operations	1.7
1132	Forest Nurseries and Gathering of Forest Products	1.7
1133	Logging	1.9
1141	Fishing	0.7
1142	Hunting and Trapping	0.5
1151	Support Activities for Crop Production	2.8
1152	Support Activities for Animal Production	2.7
1153	Support Activities for Forestry	2.0
2211	Electric Power Generation, Transmission and Distribution	1.5
2212	Natural Gas Distribution	2.5
2361	Residential Building Construction	2.1
2362	Nonresidential Building Construction	1.7
2371	Utility System Construction	2.4
2372	Land Subdivision	0.8
2373	Highway, Street, and Bridge Construction	2.4
2379	Other Heavy and Civil Engineering Construction	1.4
2382	Building Equipment Contractors	2.3
2383	Building Finishing Contractors	2.7
2389	Other Specialty Trade Contractors	2.4
3112	Grain and Oilseed Milling	2.6
3118	Bakeries and Tortilla Manufacturing	2.9
3119	Other Food Manufacturing	2.8
3122	Tobacco Manufacturing	1.9
3131	Fiber, Yarn, and Thread Mills	1.6
3132	Fabric Mills	1.4
3133	Textile and Fabric Finishing and Fabric Coating Mills	2.0
3141	Textile Furnishings Mills	1.9

2009 DART < 3.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
3149	Other Textile Product Mills	1.9
3151	Apparel Knitting Mills	1.5
3152	Cut and Sew Apparel Manufacturing	1.3
3159	Apparel Accessories and Other Apparel Manufacturing	1.6
3162	Footwear Manufacturing	2.9
3169	Other Leather and Allied Product Manufacturing	1.7
3212	Veneer, Plywood, and Engineered Wood Product Manufacturing	2.4
3221	Pulp, Paper, and Paperboard Mills	1.4
3222	Converted Paper Product Manufacturing	2.0
3231	Printing and Related Support Activities	1.6
3241	Petroleum and Coal Products Manufacturing	0.9
3251	Basic Chemical Manufacturing	1.1
3252	Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing	1.4
3253	Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing	1.8
3254	Pharmaceutical and Medicine Manufacturing	1.1
3255	Paint, Coating, and Adhesive Manufacturing	1.9
3256	Soap, Cleaning Compound, and Toilet Preparation Manufacturing	2.1
3259	Other Chemical Product and Preparation Manufacturing	1.3
3261	Plastics Product Manufacturing	2.5
3272	Glass and Glass Product Manufacturing	2.8
3274	Lime and Gypsum Product Manufacturing	1.6
3279	Other Nonmetallic Mineral Product Manufacturing	2.8
3311	Iron and Steel Mills and Ferroalloy Manufacturing	1.8
3313	Alumina and Aluminum Production and Processing	2.7
3322	Cutlery and Handtool Manufacturing	1.8
3324	Boiler, Tank, and Shipping Container Manufacturing	2.8
3325	Hardware Manufacturing	2.5
3326	Spring and Wire Product Manufacturing	2.3
3327	Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing	2.1

2009 DART < 3.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
3328	Coating, Engraving, Heat Treating, and Allied Activities	2.8
3329	Other Fabricated Metal Product Manufacturing	2.2
3331	Agriculture, Construction, and Mining Machinery Manufacturing	2.3
3332	Industrial Machinery Manufacturing	1.6
3333	Commercial and Service Industry Machinery Manufacturing	1.9
3334	Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing	2.5
3335	Metalworking Machinery Manufacturing	1.7
3336	Engine, Turbine, and Power Transmission Equipment Manufacturing	1.5
3339	Other General Purpose Machinery Manufacturing	2.1
3341	Computer and Peripheral Equipment Manufacturing	0.4
3342	Communications Equipment Manufacturing	0.8
3343	Audio and Video Equipment Manufacturing	0.6
3344	Semiconductor and Other Electronic Component Manufacturing	0.9
3345	Navigational, Measuring, Electromedical, and Control Instruments Manufacturing	0.8
3346	Manufacturing and Reproducing Magnetic and Optical Media	1.1
3351	Electric Lighting Equipment Manufacturing	2.0
3352	Household Appliance Manufacturing	1.7
3353	Electrical Equipment Manufacturing	2.0
3359	Other Electrical Equipment and Component Manufacturing	1.6
3363	Motor Vehicle Parts Manufacturing	2.6
3364	Aerospace Product and Parts Manufacturing	1.8
3365	Railroad Rolling Stock Manufacturing	2.4
3369	Other Transportation Equipment Manufacturing	2.4
3371	Household and Institutional Furniture and Kitchen Cabinet Manufacturing	2.8
3372	Office Furniture (including Fixtures) Manufacturing	2.4
3379	Other Furniture Related Product Manufacturing	2.5

2009 DART < 3.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
3391	Medical Equipment and Supplies Manufacturing	1.2
3399	Other Miscellaneous Manufacturing	2.0
4231	Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers	2.2
4232	Furniture and Home Furnishing Merchant Wholesalers	1.6
4233	Lumber and Other Construction Materials Merchant Wholesalers	2.8
4234	Professional and Commercial Equipment and Supplies Merchant Wholesalers	1.1
4236	Electrical and Electronic Goods Merchant Wholesalers	1.0
4237	Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers	1.5
4238	Machinery, Equipment, and Supplies Merchant Wholesalers	1.6
4239	Miscellaneous Durable Goods Merchant Wholesalers	2.1
4241	Paper and Paper Product Merchant Wholesalers	1.7
4242	Drugs and Druggists' Sundries Merchant Wholesalers	1.4
4243	Apparel, Piece Goods, and Notions Merchant Wholesalers	1.1
4245	Farm Product Raw Material Merchant Wholesalers	2.2
4246	Chemical and Allied Products Merchant Wholesalers	1.6
4247	Petroleum and Petroleum Products Merchant Wholesalers	1.8
4249	Miscellaneous Nondurable Goods Merchant Wholesalers	2.1
4251	Wholesale Electronic Markets and Agents and Brokers	1.0
4413	Automotive Parts, Accessories, and Tire Stores	2.5
4421	Furniture Stores	2.5
4422	Home Furnishings Stores	2.1
4442	Lawn and Garden Equipment and Supplies Stores	2.3
4521	Department Stores	2.6
4533	Used Merchandise Stores	2.7
4832	Inland Water Transportation	2.2

2009 DART < 3.0		
Recordkeeping Covered NAICS (2007)	Industry	2009 DART
4871	Scenic and Sightseeing Transportation, Land	2.4
4872	Scenic and Sightseeing Transportation, Water	2.2
4881	Support Activities for Air Transportation	2.7
4882	Support Activities for Rail Transportation	2.9
4884	Support Activities for Road Transportation	2.8
4922	Local Messengers and Local Delivery	2.5
5152	Cable and Other Subscription Programming	2.4
5311	Lessors of Real Estate	2
5321	Automotive Equipment Rental and Leasing	2.2
5322	Consumer Goods Rental	2.7
5617	Services to Buildings and Dwellings	2.4
5629	Remediation and Other Waste Management Services	2.1
6216	Home Health Care Services	2.0
6221	General Medical and Surgical Hospitals	2.8
6223	Specialty (except Psychiatric and Substance Abuse) Hospitals	2.9
7132	Gambling Industries	2.0
7211	Traveler Accommodation	2.6
8113	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	2.6
8123	Drycleaning and Laundry Services	2.5

OSHA welcomes public comment on this alternative.

ix. Alternative I - Enterprise-Wide Submission

OSHA is considering a provision to require some enterprises with multiple establishments to collect and submit some Part 1904 data for those establishments. This provision would apply to enterprises with a minimum threshold number of establishments (such as five or more) that are required to keep records under Part 1904. These enterprises would be required to collect OSHA Form 300A (log summary) data from

each of their establishments that are required to keep injury/illness records under Part 1904. The enterprise would then submit the data from each establishment to OSHA. For example, if an enterprise had seven establishments required to keep injury/illness records under Part 1904, the enterprise would submit seven sets of data, one for each establishment.

This requirement would apply to enterprises with multiple levels within the organization. For example, if XYZ Chemical Inc. owns three establishments, but is itself owned by XYZ Inc., which has several wholly owned subsidiaries, then only XYZ Inc. would have to report, but would have to report for all establishments it controls. It should be noted that these requirements would only apply to establishments within the jurisdiction of OSHA and subject to the recordkeeping rule. Establishments within the corporate structure but located on foreign soil would not be subject to the requirement.

An enterprise-wide approach to workplace safety and health is useful for both OSHA and the enterprise. OSHA has several enterprise-wide programs, including corporate-wide settlement agreements, VPP corporate recognition, Partnerships, and the Severe Violator Enforcement Program (SVEP). OSHA believes that enterprise-wide programs can significantly improve workplace safety and health, especially in cases of employers with multiple establishments that have similar real or potential hazards. In addition, roughly 100 multi-establishment enterprises currently ask to submit their ODI data through one corporate contact. For these enterprises, OSHA mails the ODI surveys for all of the establishments to the corporate contact, which collects the data from the establishments and then submits the data to OSHA.

OSHA believes that the requirement for enterprise-wide submission of injury and illness data would provide two benefits not available under proposed §1904.41(a)(2) (Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries).

First, the provision would improve employer awareness and oversight of workplace safety and health at the enterprise level. Many multi-establishment enterprises already collect and analyze establishment-level injury and illness data, but many do not. In some cases, multi-establishment enterprises only learn of an establishment's failure to provide safe and healthful working conditions as a result of a major incident or an OSHA enforcement action. Under this portion of the proposal, all multi-establishment enterprises subject to the requirement would be obligated to collect establishment-level data. This would enable the enterprises to monitor the safety and health performance of their establishments more intelligently and to deploy existing safety and health resources more effectively.

Second, this provision would enable OSHA to calculate enterprise-wide injury and illness rates, as well as the establishment-specific rates OSHA would be able to calculate under proposed §1904.41(a)(1) (Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees) and proposed §1904.41(a)(2) (Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries). Using enterprise-level data, OSHA could identify and work with enterprises that have high rates and/or large numbers of injuries and illnesses, either enterprise-wide or at multiple specific establishments. This would allow OSHA to leverage a limited number of interventions

into improved compliance and reductions in injuries and illnesses. The interventions could include focused inspections, targeted inspections, referrals to state on-site consultation programs, enhanced compliance assistance, partnerships, and other activities.

In addition, enterprise-wide collection is a logical extension of the current requirement in §1904.32(b)(3) for a company executive's certification of the annual summary for the establishment. According to §1904.32(b)(4), the certifying company executive must be either the owner of the company, an officer of the corporation, the highest-ranking company official working at the establishment, or the immediate supervisor of the highest-ranking company official working at the establishment. While, as discussed above, many multi-establishment enterprises already examine their establishments' annual summaries, others do not. Correct and complete data are necessary for OSHA, employers, and employees to identify, understand, and control hazards in the workplaces, as well as for safety and health professionals to analyze trends, identify emerging hazards, and develop solutions.

Issues

1) Definition of the relationship between the enterprise and the establishment(s)

Under this provision, an enterprise with multiple establishments would collect Part 1904 injury and illness data from those establishments. However, although Part 1904 currently includes a definition of an “establishment”, there is no definition of an “enterprise” in Part 1904. Therefore, to implement this provision, OSHA would have to define the term “enterprise”.

Under §1904.46, an establishment is “a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.”

The Statistics of U.S. Businesses (SUSB) program at the U.S. Census Bureau uses the same definition of an establishment as a single physical location where business is conducted or where services or industrial operations are performed. The SUSB is an annual series that provides detailed annual data for U.S. business establishments by geography, industry, and establishment size.

There is currently no definition of an enterprise in Part 1904. However, the SUSB defines an enterprise as “a business organization consisting of one or more domestic establishments that were specified under common ownership or control.”¹ For firms with only one establishment, the enterprise and the establishment are the same. For firms with more than one establishment, each multi-establishment company forms one enterprise.

Using this definition of an enterprise would require OSHA also to define what constitutes “ownership or control”. This definition would need to be clear and easy to use, and it would also need to minimize the chance of multiple submissions of injury/illness data for the same establishment.

One possible measure of ownership or control is the enterprise’s percentage of ownership of the establishment. In this case, the definition could be “For the purposes of

¹ Statistics of U.S. Businesses, Definitions, United States Census Bureau
<http://www.census.gov/econ/susb/definitions.html>

this section, if an enterprise has an ownership share greater than 50% in an establishment, it is considered to have ownership or control of that establishment.” For example, if Corporation A owns a majority of the stock of subsidiary Corporation B, the establishments owned and operated by Corporation B would be considered part of the Corporation A enterprise.

Instead of “enterprise”, the U.S. Equal Employment Opportunity Commission (EEOC) uses the term “multi-establishment employer” and defines it as an employer “doing business at more than one establishment”.² For multi-establishment employers, the “headquarters office” must collect the forms from the establishments, or the “parent corporation” must collect the forms from its “subsidiary holdings”. The EEOC defines “parent corporation” as “any corporation which owns all or the majority stock of another corporation so that the latter stands in the relation to it of a subsidiary.”

OSHA would consider using some of these definitions for the purpose of this section. However, other measures and definitions are possible. OSHA welcomes comments on this issue.

2) Other issues

OSHA has identified two other issues that may affect the feasibility and burden associated with an enterprise-wide collection.

Occupation: For calculating burden, OSHA ordinarily assumes that recordkeeping tasks at the establishment level are performed by human resource specialists (BLS Standard Occupation Code 13-1071). However, the proposed provision would require recordkeeping tasks at the enterprise level. OSHA seeks information on the occupation or

² EEO-01: How to File, <http://www.eeoc.gov/employers/eo1survey/howtofile.cfm>, accessed 11/5/2012.

occupations that would best describe the people who would perform these tasks at the enterprise level.

Duplication: The Paperwork Reduction Act (PRA) requires agencies to identify and minimize any duplication in the collection of information. The enterprise-wide reporting provision, in combination with proposed §1904.41(a)(2), could lead to the possibility that establishment-specific data would be submitted to the Agency more than once. For example, an establishment might submit its summary data to OSHA in compliance with proposed §1904.41(a)(2), while the enterprise submitted the same data to OSHA in compliance with this proposed provision. One solution to this problem would be regulatory text explaining that the establishment is not required to submit data under §1904.41(a)(2) if the enterprise is required to submit the establishment's data under the proposed provision. However, the Agency recognizes that figuring out who should submit the establishment's data would require coordination between a multi-establishment enterprise and its establishments. OSHA seeks information on the burden associated with this coordination.

Possible additional regulatory text

1904.41(a)(4) Annual electronic submission of OSHA annual summary form (Form 300A) by enterprises with five (5) or more establishments. If your enterprise had ownership or control of five (5) or more establishments covered by the recordkeeping rule during the entirety of the previous calendar year, you must electronically send to OSHA or OSHA's designee, once a year, the information from the completed annual summary form (Form 300A) for each controlled establishment, including the enterprise

location. The information must be submitted no later than March 2 of the year after the calendar year covered by the form.

1904.41(b)(7) What is the definition of “ownership or control” in §1904.41(a)(4)?

Ownership or control means that the enterprise has an ownership share of greater than 50% in the establishment.

1904.41(b)(8) If §1904.41(a)(4) requires the enterprise to submit an establishment’s

summary data, does the establishment also have to submit the summary data under

§1904.41(a)(1)(v) or §1904(a)(2)? No, the summary data (Form 300A) for the

establishment should only be submitted once, by the enterprise. However, establishments subject to §1904.41(a)(1) must submit all of the other information required by that provision.

1904.41(b)(9) If an establishment is partially exempted from the recordkeeping

requirements under §1904.2, does the enterprise have to submit data for that

establishment? No, the enterprise is only required to submit data from establishments required to maintain the injury and illness records.

Questions

OSHA seeks comment on the following questions:

- How hard is it for a multi-establishment enterprise to identify all of the establishments under its ownership or control?
- Are there types of multi-establishment firms or multi-level firms for which this would represent a greater burden than for others?

- Would the burden on multi-establishment enterprises to collect and submit their OSHA data be more, less, or the same as the burden to collect and submit data from their establishments to the EEOC?
- Which occupation or occupations would describe the employee(s) likely to perform the task of identifying all of the establishments under its ownership or control?
- How probable is it that the employee(s) likely to perform this task for OSHA's requirements would be performing the same task for the EEOC's requirements?
- Which occupation or occupations would describe the employee(s) likely to perform the task of collecting, compiling, and submitting the establishment-specific annual summary data from each establishment under the enterprise's ownership or control?
- How should OSHA define "ownership or control"?
- At least how many establishments should an enterprise have in order to be subject to a requirement for enterprise-wide submission of establishment-specific data?
- Would the burden of enterprise-wide collection increase as the number of establishments per enterprise increases, and if so, how?
- Should the requirement include a minimum establishment size? For example, the requirement could apply to enterprises with 5 or more establishments, but only if each establishment has 10 or more employees.

- Should the requirement include a minimum enterprise-wide employment size? For example, the requirement could apply only if total employment for the whole enterprise, including all of the establishments belonging to the enterprise, is 50 employees or more.
- To what extent do enterprises already collect establishment-specific injury/illness data from all of their establishments?
- To what extent do enterprises already collect other establishment-specific data from all of their establishments for the purpose of reporting the data to the government?
- Do enterprises generally know their corporate linkage identifiers (i.e., their Universal DUNS number)? How much additional burden would it be for the enterprise to provide this information?
- What special circumstances apply to organizations such as holding companies and private equity firms? Do these types of organizations play a role in the occupational safety and health of the companies they control?
- What other identifiers do enterprises currently use, or could enterprises use, for submitting data to the government?

3. Questions

OSHA welcomes comments and data from the public regarding any aspect of the proposed requirement for electronic submission of Part 1904 injury and illness records. More specifically, the following questions are relevant to this rulemaking:

- What are the implications of requiring all data to be submitted electronically? This proposed rule would be among the first in the federal government without a paper submission option.
- More current BLS injury and illness data will be available at the time of the final rulemaking. Use of newer data may result in changes to the proposed industry coverage. Should OSHA use the most current data available in determining coverage for its final rule? Would this leave affected entities without proper notice and the opportunity to provide substantive comment?
- Should the electronic submission requirement be phased in, with a paper submission option available for a certain period of time at the beginning for some or all of the establishments subject to the proposed rule, or should the electronic submission requirement take effect immediately?
- What are the implications of a phased-in electronic submission requirement versus an immediate electronic submission requirement for establishments subject to proposed §1904.41(a)(1) Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees?
- What are the implications of a phased-in electronic submission requirement versus an immediate electronic submission requirement for establishments subject to proposed §1904.41(a)(2) Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries?
- How should the electronic data submission system be designed? How can OSHA create a system that is easy to use and compatible with other electronic systems that track and report establishment-specific injury and illness data?

- Should the electronic data submission system be designed to include updates?
§1904.33(b) requires employers to update OSHA Logs to include newly-discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously-recorded injuries and illnesses.
- How can OSHA use the electronic submission requirement to improve the accuracy of injury and illness records by encouraging careful reporting and recording of work-related injuries and illnesses?
- How should OSHA design an effective quality assurance program for the electronic submission of injury and illness records?
- What additional steps, if any, should the Agency take to protect employee privacy interests?
- Are there views on the issue of OSHA recordkeeping forms and confidential commercial information?
- Which categories of information, from which OSHA-required form, would it be useful to publish?
- What analytical tools could be developed and provided to employers to increase their ability to effectively use the injury and illness data they submit electronically?
- How can OSHA help employers, especially small-business employers, to comply with the requirements of electronic data submission of their injury and illness records? Would training help, and if so, what kind?
- Should this data collection be limited to the records required under Part 1904? Are there other required OSHA records that could be collected and made available to the public in order to improve workplace safety and health?

- For the proposed §1904.41(a)(1) (Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees), what would be the advantages and disadvantages of making submission monthly, rather than quarterly?
- For the proposed §1904.41(a)(1) (Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees), what would be the advantages and disadvantages of making submission annual, rather than quarterly?
- For the proposed §1904.41(a)(1) (Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees), is 250 or more employees the appropriate size criterion? How much burden would this impose on establishments with 250-500 employees? If the size criterion were lowered to 100 or more employees, how much burden would this impose on establishments with 100-250 employees?
- Should the designated industries for proposed §1904.41(a)(2) (Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries) remain the same each year, or should the list be adjusted each year to reflect the most current BLS injury and illness data? If so, how could OSHA best inform affected establishments about the adjustments?
- How can OSHA help employees and potential employees use the data collected under this proposed rule?

V. Preliminary Economic Analysis and Regulatory Flexibility Certification

a. Introduction

Executive Orders 12866 and 13563 require that OSHA estimate the benefits, costs, and net benefits of proposed regulations. Executive Orders 12866 and 13563, the

Regulatory Flexibility Act, and the Unfunded Mandates Reform Act also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of certain rules that the Agency promulgates. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

OSHA estimates that this rule will have economic costs of \$11.9 million per year, including \$10.5 million per year to the private sector, with costs of \$183 per year for affected establishments with 250 or more employees and \$9 per year for affected establishments with 20 or more employees in designated industries. The Agency believes that the annual benefits, while unquantified, significantly exceed the annual costs.

The proposed rule is not a “significant regulatory action” under Executive Order 12866 or the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)), and it is not a “major rule” under the Congressional Review Act (5 U.S.C. 801 et seq.). The Agency estimates that the rulemaking imposes far less than \$100 million in annual economic costs. In addition, it does not meet any of the other criteria specified by UMRA or the Congressional Review Act for a significant regulatory action or major rule. This Preliminary Economic Analysis (PEA) addresses the costs, benefits, and economic impacts of the proposed rule.

The proposed rule will make three changes to the existing recording and reporting requirements in Part 1904.

First, OSHA will require establishments that are required to keep injury and illness records under Part 1904, and that had 250 or more employees in the previous year, to electronically submit information from all of these required records to OSHA or OSHA's designee, on a quarterly basis.

Second, OSHA will require establishments that are required to keep injury and illness records under Part 1904, had 20 or more employees in the previous year, and are in certain designated industries, to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee, on an annual basis. This requirement will replace OSHA's annual illness and injury survey, authorized by the current version of 29 CFR 1904.41.

Third, OSHA will require all employers who receive notification from OSHA to electronically submit information from their injury and illness records to OSHA or OSHA's designee.

The proposed rule does not add to or change any employer's obligation to complete, retain, and certify injury and illness records. The proposed rule also does not add to or change the recording criteria or definitions for these records. The only change is that, under certain circumstances, employers will be obligated to transmit information from these records to OSHA in an electronic format (either a file or by a secure webpage). Many employers are already doing this through the OSHA Data Initiative and the BLS Survey of Occupational Injuries and Illnesses.

The electronic submission of information to OSHA would be a relatively simple and quick matter. In most cases, submitting information to OSHA would require several basic steps: 1) logging on to OSHA's web-based submission system; 2) entering basic

establishment information into the system; 3) copying the required injury and illness information from the establishment's paper forms into the electronic submission forms; and 4) hitting a button to submit the information to OSHA. In many cases, especially for large establishments, OSHA data are already kept electronically, so step 3, which is likely the most time-intensive, would not be necessary. In those cases, the establishment would be able to submit its electronic information, in the format in which it is kept, to OSHA without having to transfer it into OSHA's online format. The submission system, as anticipated, would also save an establishment's information from one submission to the next, so step 2 might be eliminated for most establishments after the first submission.

b. Costs

1. §1904.41(a)(1) – Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees

To obtain the estimated cost of electronic data submission per establishment, OSHA began by multiplying the compensation per hour (in dollars) of the person expected to perform the task of electronic submission by the time required for the electronic data submission. OSHA then multiplied this cost per establishment by the estimated number of establishments that would be required to submit data, to obtain the total estimated costs of this part of the proposed rule.

To estimate the compensation of the person expected to perform the task of electronic data submission, OSHA assumed that recordkeeping tasks are most commonly performed by a Human Resource, Training, and Labor Relations Specialist, Not Elsewhere Classified (Human Resources Specialist). OSHA made the same assumption

in the PEA for the proposed rule on restoring a column to the OSHA 300 Log that employers would use to record work-related musculoskeletal disorders (MSDs) (75 FR 10738-10739 (March 9, 2010)). OSHA estimated compensation using May 2008 data from the BLS Occupational Employment Survey (OES), reporting a mean hourly wage of \$28 for Human Resources Specialists, and June 2009 data from the BLS National Compensation Survey, reporting a mean fringe benefit factor of 1.43 for civilian workers in general. OSHA multiplied the mean hourly wage (\$28) by the mean fringe benefit factor (1.43) to obtain an estimated total compensation (wages and benefits) for Human Resources Specialists of \$40.04 per hour ($[\$28 \text{ per hour}] \times 1.43$).

OSHA recognizes that not all firms assign the responsibility for recordkeeping to a Human Resources Specialist. For example, a smaller firm may use a bookkeeper, while a larger firm may use an occupational safety and health specialist. However, OSHA believes that the calculated cost of \$40.04 per hour is a reasonable estimate of the hourly compensation of a representative recordkeeper. OSHA welcomes comments on the issue of hourly compensation costs for representative recordkeepers.

For time required for the data submission, OSHA used the estimated unit time requirements reported by BLS in their paperwork burden analysis for the Survey of Occupational Injuries and Illnesses (SOII) (OMB Control Number 1220-0045, expires October 31, 2013)³. BLS estimated 10 minutes per recordable injury/illness case for electronic submission of the information on Form 301 (Injury and Illness Incident

³ The ODI paperwork analysis (1218-0209) takes an average time of 10 minutes per response for submitting Form 300A data. The ODI does not require submission of Form 301 data. The 10 minute estimate from the ODI is equal to the 10 minute estimate from the BLS SOII for submission of the same data.

Report). BLS also estimated 10 minutes per establishment, total, for electronic submission of the information on both Form 300 (Log of Work-Related Injuries and Illnesses) and 300A (Summary of Work-Related Injuries and Illnesses). OSHA believes that this may overestimate the time required for electronic submission of Form 300 and 300A information to OSHA, because each establishment's annual submissions will consist of four submissions of Form 300 information but only one submission of Form 300A information. However, OSHA assumes that most of the time required for submission of Form 300A information will be spent on the submission process (i.e., logging on and off the data submission site, assuring the accuracy of log-on information, and so on), rather than on entry of the limited amount of information on the form. Therefore, OSHA considers it appropriate to use the BLS estimate.

Using the information on estimated hourly compensation of recordkeepers and estimated time required for data submission, OSHA calculated that the estimated cost per establishment with 250 or more workers for quarterly data submission of the information on Forms 300 and 300A would be \$26.69 per year ([10 minutes per data submission] x [1 hour per 60 minutes] x [\$40.04 per hour] x [4 data submissions per year]). In addition, the estimated cost per recordable injury/illness case would be \$6.67 ([10 minutes per case] x [1 hour per 60 minutes] x [\$40.04 per hour]).

To calculate the total estimated costs of this part of the proposed rule, OSHA used establishment and employment counts from the U.S. Census County Business Patterns (CBP), and injury and illness counts from the BLS Survey of Occupational Injuries and Illnesses (SOII)⁴. CBP data show that there are 38,094 establishments with

⁴ For the CBP see: <http://www.census.gov/econ/cbp/>. For the SOII see: <http://www.bls.gov/iif/oshsum.htm>.

250 or more employees in the industries covered by this section. These establishments would be required to electronically report detailed injury and illness information on a quarterly basis under the proposed rule. The CBP data also indicate that these large establishments employ 35.8% of all employees in the covered industries. The BLS data show a total of 2,486,500 injuries and illnesses that occurred in the covered industries. To calculate the number of injuries and illnesses that will be reported by covered establishments with 250 or more employees, OSHA assumed that total recordable cases in establishments with 250 or more employees would be proportional to their percentage of employment within the industry. Thus, OSHA estimates that 890,288 injury and illness cases will be reported per year by establishments with 250 or more employees that are covered by this section.

OSHA then calculated an estimated total cost of quarterly data submission of non-case information of \$1,016,729 ([38,094 establishments required to submit data quarterly] x [\$26.69 for electronic data submission per year]). In addition, OSHA calculated an estimated total cost of quarterly data submission of case information of \$5,938,221 ([890,288 injury/illness cases per year at affected establishments] x [\$6.67 per injury/illness case]). Summing these two costs yields a total cost of \$6,954,950 per year (\$1,016,729 + \$5,938,221), for an average cost per affected establishment of \$183 per year.

OSHA is interested in comments on all aspects of this preliminary estimate. In addition, these cost estimates assume that all establishments with 250 or more employees will be able to report electronically with existing facilities and equipment. OSHA

welcomes any examples of such establishments that cannot report electronically with existing facilities and equipment or data sources showing that such establishments exist.

These cost estimates also include establishments currently included in the OSHA Data Initiative. OSHA did not calculate a comparison between the current costs of annual submission of some Part 1904 recordkeeping information under the ODI and the costs of quarterly electronic data submission of all Part 1904 recordkeeping information under the proposed rule. However, for establishments that are already included in the current ODI, the additional costs of quarterly electronic data reporting under this part of the proposed rule will be less than the calculated \$183 per year.

2. §1904.41(a)(2) – Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries

As in the previous section on quarterly electronic submission of Part 1904 records from establishments with 250 or more employees, OSHA first obtained the estimated cost of electronic data submission per establishment by multiplying the compensation per hour (in dollars) for the person expected to perform the task of electronic data submission by the time required for the electronic data submission. OSHA then multiplied this cost by the estimated number of establishments that would be required to submit data, to obtain the total estimated costs of this part of the proposed rule.

As in the previous section, for compensation per hour, OSHA used the calculated cost of \$40.04 per hour as a reasonable estimate of the hourly compensation of a representative recordkeeper.

OSHA used the BLS estimate of 10 minutes per establishment for electronic submission of the information on Forms 300 (Log of Work-Related Injuries or Illnesses)

and 300A (Summary of Work-Related Injuries and Illnesses) to estimate the time required for this submission. This may be an overestimate, because the requirement in this part of the proposed rule is for electronic submission of information from Form 300A only. However, OSHA assumes that most of the time required for submission of Form 300A information will be spent on the submission process (i.e., logging on and off the data submission site, assuring the accuracy of log-on information, and so on), rather than on entry of the limited amount of information on the form. Therefore, OSHA considers it appropriate to use the BLS estimate.

The estimated cost per establishment for electronic submittal under this part of the proposed rule is thus \$6.67 per year ($[\$40.04 \text{ per hour}] \times [10 \text{ minutes per data submission}] \times [1 \text{ hour per 60 minutes}] \times [\text{one data submission per year}]$).

To estimate the number of establishments affected, OSHA assumed that this part of the proposed rule would require annual electronic data submission from establishments with 20 or more employees in the non-exempt industries listed in the proposed rule. Under these criteria, 440,863 establishments would be subject to this part of the proposed rule.

However, many of these establishments are already submitting these data to OSHA through the current OSHA Data Initiative (ODI). 47,700 establishments of the 68,600 establishments in the 2010 ODI (70%) submitted their data electronically. Because these establishments are already submitting the data required by this part of the proposed rule, in the manner required by this part of the proposed rule, it is reasonable to assume that this part of the proposed rule will not result in any new costs for these 47,700 establishments. OSHA has no reason to think that establishments in the ODI are any

different in terms of recordkeeping compliance rates from the expanded number of establishments affected by this proposed rule. The reason for this is that the underlying population for both the ODI sample and this expanded reporting sample are part of the same universe: establishments already required to keep records.

As a result, if all of the affected establishments have on-site access to a computer and an adequate Internet connection, OSHA estimates that the direct labor cost of this part of the proposed rule would be \$2,622,397 ($[\$6.67 \text{ per establishment per year}] \times [(440,863 \text{ establishments affected under the proposed rule}] - [47,700 \text{ establishments already submitting electronically to the ODI}])$)).

However, as noted above, 30% of establishments in the 2010 ODI did not submit data electronically. One possible reason for this choice is that, for some of the establishments affected by this part of the proposed rule, it is difficult to submit data electronically. Most agencies currently allow non-electronic filing of information, and some businesses continue to use this option, despite strong encouragement by agencies to file electronically.

OSHA searched for but was unable to find information on the proportion of all businesses without access to a computer and the Internet. However, OSHA did find a survey, conducted by a contractor for the Office of Advocacy of the Small Business Administration (SBA) in the spring of 2010, on the use of Internet connectivity by small businesses, called "The Impact of Broadband Speed and Price on Small Business" (http://www.sba.gov/sites/default/files/rs373tot_0.pdf). This survey suggests that at least 90 percent of small businesses surveyed use the Internet at their business. Further, the survey noted that 75 percent of all small businesses not using the Internet were small

businesses with five or fewer employees. Given the survey's estimates that 50 percent of small businesses have fewer than 5 employees, this means that 95 percent of all small businesses with five or more employees have Internet connections. OSHA believes that even this 95 percent is an underestimate for two reasons. First, the survey is three years old, and during the past three years the cost of both computer equipment and Internet access has fallen (for example, since May 2008 the BLS Personal Computer Index has fallen by 12 percent;

http://data.bls.gov/timeseries/CUSR0000SEEE01?output_view=pct_3mths). Second, the survey is of small entities, not establishments. OSHA can show that a significant proportion of small establishments are a part of non-small entities, and those larger entities are even more likely to have computers and Internet connections.

It also needs to be noted that the minimum establishment size affected by this proposed rule is 20 employees. It is reasonable to assume that even a smaller percentage of firms with 20 or more employees lack a computer with an Internet connection.

OSHA was able to find only two current Federal Government data collection programs that require data to be submitted electronically.

- Effective January 1, 2010, the Department of Labor's Employee Benefits Security Administration requires the electronic filing of all Form 5500 Annual Returns/Reports of Employee Benefit Plan and all Form 5500-SF Short Form Annual Returns/Reports of Small Employee Benefit Plan for 2009 and 2010 plan years, as well as any required schedules and attachments, using EFAST2-approved third-party software or iFile. EFAST2 is an all-electronic system designed by the Department of Labor, Internal Revenue Service, and Pension

Benefit Guaranty Corporation to simplify and expedite the submission, receipt, and processing of the Form 5500 and Form 5500-SF. These forms must be electronically filed each year by employee benefit plans to satisfy annual reporting requirements under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. Under EFAST2, filers choose between using EFAST2-approved vendor software or a free limited-function web application (IFILE) to prepare and submit the Form 5500 or Form 5500-SF. Completed forms are submitted via the Internet to EFAST2 for processing.

- Under the mandatory electronic filing provisions (11 CFR 104.18) of the Federal Election Commission (FEC), effective January 1, 2001, any political committee or other person that is required to file reports with the FEC and that receives contributions or makes expenditures in excess of \$50,000 in the current calendar year, or has reason to expect to do so, must submit its reports electronically.

All other current data collection programs identified by OSHA provide a non-electronic option for data submission, including the OSHA Data Initiative (ODI); various databases at the Environmental Protection Agency, including the Toxics Release Inventory Program (TRI); and programs administered by the Internal Revenue Service, the Bureau of Labor Statistics, and the U.S. Census Bureau (including business data).

As noted above, even a dated survey from 2010 found that 95 percent of small businesses with 5 or more employees had a computer with an Internet connection. The Department of Commerce estimated in 2009 that 69% and 64% of U.S. households, respectively, had any kind of Internet access and broad-band Internet access specifically (National Telecommunications and Information Administration, U.S. Department of

Commerce, “Table 2 Households using the Internet in and outside the home, by selected characteristics: Total, Urban, Rural, Principal City, 2009 (Numbers in Thousands)”, http://www.ntia.doc.gov/legacy/data/CPS2009_Tables.html). In addition, households with higher incomes and levels of education were more likely to have Internet access at home, and home Internet access among employed householders was 78%, compared to 65% among unemployed householders and 52% among householders not in the labor force.

It seems reasonable to assume that business owners, as a group, have higher incomes and labor force participation rates than the U.S. population as a whole. And data from the 2007 Survey on Small Business Owners, conducted by the U.S. Census Bureau, show that business owners have higher levels of education; 74% of the business owners had at least some post-high school education and 45% had at least a bachelor’s degree, compared to 55% and 30% among the general U.S. population aged 25 and older in 2010 (U.S. Census, “Table 1. Educational Attainment of the Population 18 Years and Over, by Age, Sex, Race, and Hispanic Origin: 2010”, <http://www.census.gov/hhes/socdemo/education/data/cps/2010/Table1-01.xls>, accessed June 15, 2011). Further, a small business owner without an office or home computer may own a smart phone, which could easily be used for transmitting the data in this very simple form.

To account for the lack of direct data on computers and Internet access among small businesses and the presumed increase in Internet usage since the indirect data were obtained, OSHA will estimate that 95% of the 440,863 establishments subject to this part of the proposed rule (i.e., 418,820 establishments) have access to a computer with an

Internet connection, either at home or at work. OSHA believes that the actual percentage of establishments with Internet access at the office, home, or by smart phone is larger than this estimated value. OSHA welcomes comment on this issue. The remaining 22,043 establishments would have to either buy additional equipment and/or services or use off-site facilities, such as public libraries. OSHA preliminarily estimates that finding and using such off-site facilities would add an hour (including transportation and waiting time) to the time required by the recordkeeper to submit the data electronically. This would lead to additional costs of \$882,607 per year ($[440,863 \text{ establishments}] \times [5\% \text{ of these establishments}] \times [1 \text{ hour for finding and using off-site facilities}] \times [\$40.04 \text{ per hour}]$). OSHA is interested in comments on all aspects of this preliminary estimate.

The total costs of this part of the proposed rule are the direct labor cost of electronic submittal (\$2,622,397) for the 393,163 establishments subject to the rule and not already electronically submitting the data to OSHA through the ODI, plus the additional cost for 5% of the affected 440,863 establishments of going off-site to submit the data electronically (\$882,607). A last cost of \$189,935, for those establishments that do not currently certify their records, is discussed below. Thus, the total cost is \$3,695,939 per year, or an approximate estimated average of \$9.40 per affected establishment ($[\$3,695,939 \text{ per year}] / ([440,863 \text{ establishments affected under the proposed rule}] - [47,700 \text{ establishments already submitting electronically to the ODI}])$).

Note that these cost estimates include establishments that would already be submitting these data under the proposed requirement for quarterly electronic submission of Part 1904 records by establishments with 250 or more employees. Of the 38,094 establishments that would be affected by the proposed requirement for quarterly

submission of records by establishments with 250 or more employees, 17,491 would also be affected by the proposed requirement for annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries. However, the cost estimate has already removed many of these 17,491 establishments as part of the 47,700 establishments subject to this part of the proposed rule and currently submitting annual information electronically to OSHA through the ODI. The number of establishments that would be affected by both the quarterly submission requirement and the annual submission requirement, and that are not currently submitting information electronically to OSHA through the ODI, is probably too small to make a significant difference in the calculated costs of \$3.7 million per year.

A small percentage of establishments currently subject to Part 1904 do not fully comply with the requirement in §1904.32(a)(3) to certify the accuracy of each year's records. OSHA determined, based on inspection data, that in 2010 about 1.6 percent of establishments undergoing inspection had violations of the recordkeeping certification requirement. OSHA has estimated costs and a paperwork burden for the time these employers would spend reviewing their data for certification purposes. Because this data collection would make it obvious to these employers that a record has not been certified, OSHA included the full costs of certification for those not in compliance with §1904.32(a)(3) as a cost of this rule. The number of those that do not comply may be estimated by multiplying 1.6 percent times 360,863 establishments subject to the rule but not currently in the ODI (440,863 total establishments minus 80,000 in ODI). The resulting figure is only 5,774 establishments not currently in compliance. The cost for

these non-compliers to comply with §1904.32(a)(3) by completing certification is \$189,935. This is calculated by multiplying 30 minutes by 5,774 establishments (resulting in 2,887 hours) times the adjusted hourly wage for a certifying official (\$65.79). This wage reflects the hourly wage plus benefits of an Industrial Production Manager (OES 11-3051), the same occupation used for certification of records in other OSHA recordkeeping regulations. OSHA invites comments on whether 1.6 percent is the actual certification non-compliance rate for firms subject to Part 1904, and on whether the adjusted wage of \$65.79 is, on average, the correct wage rate for individuals certifying annual recordkeeping logs.

OSHA believes, and current ICRs support, that 30 minutes is the appropriate amount of time required, on average, for certification. However, it is possible to exhibit a range of time requirements. If, for example, the certifying officials are especially productive at certification, perhaps because the injury and illness records are well-maintained or because they are able to work off existing finalized summary reports sent to Workers' Compensation insurance agencies, then it may only take 15 minutes, on average, to complete the certification. In that case, the total cost would be just \$94,967. On the other hand, perhaps the certifying officials have become less productive since the previous ICRs. If it now takes a certifying official one hour instead of 30 minutes to certify, then the total cost for non-complying establishments would be \$379,870.

3. §1904.41(a)(3) – Electronic submission of Part 1904 records upon notification

This part of the proposed rule has no immediate costs or economic impacts. Under this part of the proposed rule, an establishment will be required to submit data electronically if OSHA notifies the establishment to do so as part of a specified data

collection. Each specified data collection would be associated with its own particular costs, benefits, and economic impacts, which OSHA would estimate as part of obtaining OMB approval for the specified data collection under the Paperwork Reduction Act of 1995.

4. Budget costs to the government for the creation of the reporting system, helpdesk assistance, and administration of the electronic submission program

While OSHA has not typically included the cost of administering a new regulation in the preliminary economic analysis, in this document the Agency has included such costs because they represent a significant fraction of the total costs of the regulation. These costs will be offset by budget savings from the discontinuation of the current ODI survey. The program lifecycle costs can be categorized into IT hardware and software costs, helpdesk costs, and OSHA program management personnel costs. OSHA received estimates for the lifecycle costs from three sources: an OSHA contractor, the BLS, and OSHA offices.

According to OSHA's Office of Web Services, the creation of the reporting system hardware and software infrastructure will have an initial cost of \$1,545,162. Annualized over 10 years at seven percent interest, this is \$219,996 per year.

BLS provided a unit cost estimate of 28 cents per transaction. This would amount to \$372,000 per year for about 1.3 million transactions. Adding annual help desk costs of \$200,000 would make the total \$572,000.

The contractor and OSHA's Office of Web Services provided higher budget estimates. The contractor suggested that annual costs could be as high as \$953,000, while the OSHA Office of Web Services suggested a cost of \$626,000 per year.

OSHA will also continue to require three full-time-equivalent workers (FTEs) to administer the new electronic recordkeeping system. OSHA believes these FTEs will cost the government \$150,000 each, including salary and benefits, for a total of \$450,000 per year. Added to the BLS cost of \$572,000 and the annualized start-up cost of \$220,000, this would amount to \$1,242,000, or just over \$1.2 million, and less than the budget of the current ODI. Adding the FTE costs to the contractor and OSHA Office of Web Services estimates, along with the annualized start-up cost yields a range of between \$1.2 million and \$1.6 million per year. For its best estimate, OSHA will use the BLS estimated costs per transaction, because this estimate is based on actual experience with implementing a similar program.

5. Total costs of the rule

As shown in the table below, the total costs of the proposed rule would be an estimated \$11.9 million per year.

Table V-1. Total Costs of the Proposed Rule

Cost Element	Annual Costs
Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees	\$6,954,950
Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries	\$3,695,939
This includes:	
Cost for annual electronic submission.....\$2,622,397	
Cost for establishments without a computer.....\$883,607	
Cost for establishments with non-certified records...\$189,935	
Electronic submission of Part 1904 records upon notification	\$0*
Total Private Sector Costs	\$10,650,889
Total Government Costs	\$1,242,000
Total	\$11,892,889

*This part of the proposed rule has no immediate costs or economic impacts. Under this part of the proposed rule, an establishment would be required to submit data

electronically if OSHA notified the establishment to do so as part of a specified data collection. Each specified data collection would be associated with its own particular costs, benefits, and economic impacts, which OSHA would estimate as part of obtaining OMB approval for the specified data collection under the Paperwork Reduction Act of 1995.

The above costs include the costs (estimated to be \$189,935) for establishments that are currently out of compliance with the existing certification requirements to come into compliance with these requirements before electronically submitting their data to OSHA. However, OSHA did not include costs related to another possibility – namely, that this proposal would result in increased costs for meeting OSHA recordkeeping requirements by employers who currently certify that their records are accurate, because these employers will take more pains to ensure accuracy if the records are electronically submitted to OSHA. There are several reasons why OSHA assumes no added burden for these employers who already certify that their records are accurate.

First, as noted, the proposed rule does not add to or change any employer's obligation to complete, retain, and certify injury and illness records. The proposed rule also does not add to or change the recording criteria or definitions for these records. The only change is that, under certain circumstances, employers will be obligated to transmit information from these records to OSHA in an electronic format (either a file or by a secure webpage). Many employers are already doing this through the OSHA Data Initiative; these employers have not commented, either on the rule or on the paperwork analyses, that they incurred additional costs beyond those that OSHA estimated (see for example the ODI ICR 200912-1218-012 and the SOII ICR 201209-1220-001).

Second, employers are already required to examine and certify the information they collect, under penalty of perjury. Employers who are already sufficiently satisfied

with the accuracy of their records to accept the risk of a criminal penalty are unlikely to do more simply because they must electronically submit the records to OSHA. Therefore, the prospect of submitting their data to OSHA would not provide any additional incentive to carefully record injuries and illnesses.

Third, injury and illness records kept under Part 1904 are already available to OSHA and the public in a variety of ways. The annual summary data must be posted where employees can see it. Employees or their representatives can also obtain and publicize most of the information from these records at any time, if they so wish. These are the people who are most likely to recognize if the records are inaccurate. Finally, OSHA Compliance Officers routinely review these records when they perform workplace inspections. While OSHA inspections are a rare event for the typical business, they are much more common for firms with over twenty employees in the kinds of higher-hazard industries subject to this rule.

Nevertheless, OSHA welcomes comment on the issue of whether employers newly required to submit records to OSHA may spend additional time assuring the accuracy of their records, beyond what they spend now. If all 360,000 facilities (440,863 minus 80,000) not now submitting data to ODI were to spend an extra half hour for a human resources specialist to double-check the data prior to submission, then the costs of this rule would increase by \$7.2 million. While this would be a substantial addition to the costs of the rule, such an addition would not alter OSHA's conclusion that this is neither an economically-significant rule nor a rule that would impose significant costs on a substantial number of small businesses.

c. Benefits

OSHA anticipates that establishments' electronic submission of establishment-specific injury/illness data will improve OSHA's ability to identify, target, and remove safety and health hazards, thereby preventing workplace injuries, illnesses, and deaths. In addition, OSHA believes that the data submission requirements of the proposed rule will improve the quality of the information and lead employers to increase workplace safety.

Finally, the Agency plans to make the injury and illness data public, as encouraged by President Obama's Open Government Initiative. Online access to these data will allow the public, including employees and potential employees, researchers, employers, and workplace safety consultants, to use and benefit from the data. It will support the development of innovative ideas and allow everybody with a stake in workplace safety to participate in improving occupational safety and health. The data collected by BLS is mostly used in the aggregate. While BLS makes micro data available in a restricted way to researchers, OSHA will make micro data, including case data, available to researchers and the public with far fewer restrictions.

The BLS SOII is used as a basis for much of the research on workplace safety and health in the US. Typical examples include Economic Burden of Occupational Injury and Illness in the United States, by J. Paul Leigh (2011); Analyzing the Equity and Efficiency of OSHA Enforcement, by Wayne B. Gray and John T. Scholz (1991); Establishment Size and Risk of Occupational Injury, by Dr. Arthur Oleinick MD, JD, MPH, Jeremy V. Gluck PhD, MPH, and Kenneth E. Guire (1995); and Occupational Injury Rates in the U.S Hotel Industry, by Susan Buchanan et al in the American Journal of Industrial Medicine (2010). Some of these studies, such as Gray and Sholtz, use establishment data previously only available on site at BLS.

The data base resulting from this proposed rule would provide for the use of establishment-specific data without having to work under the restrictions imposed by BLS for the use of confidential data. It would also provide data on injury and illness classifications that are not currently available from any source, including the BLS SOII. Specifically, under this collection, there would be case-specific data for injuries and illnesses that do not involve days away from work. The BLS case and demographic data is limited to cases involving days away from work and a small subset of cases involving restricted work activity.

In order to determine possible monetary benefits to this rule, OSHA calculated the value of statistical life (VSL) using Viscusi & Aldy's (2003) meta-analysis of studies in the economics literature that use a willingness-to-pay methodology to estimate the imputed value of life-saving programs. The authors found that each fatality avoided was valued at approximately \$7 million in 2000 dollars. Using the GDP Deflator (U.S. Bureau of Economic Analysis, 2010), OSHA estimated that this \$7 million base number in 2000 dollars yields an estimate of \$8.7 million in 2009 dollars for each fatality avoided.

Many injuries and fatalities can be prevented at minimal costs. For example, the costs of greater use of already-purchased personal protective equipment are minimal, yet many fatalities described in OSHA's IMIS system could have been prevented through the use of available personal protective equipment. This includes fatalities related to falls when a person was wearing fall protection but did not have the lanyard attached and to electric shocks where arc protection was available or left in the truck. For such minimal-cost preventative measures, assuming they have costs of prevention of less than \$1 million per fatality prevented and using the VSL of \$8.7 million and other parameters

typically used in OSHA benefits, if the proposed rule leads to either 1.5 fewer fatalities or 0.025% fewer injuries per year, the rule's benefits will be equal to or greater than the costs. Many accident-prevention measures will have some costs, but even if these costs are 75 percent of the benefits, the proposed rule would have benefits exceeding costs if it prevented 4.8 fatalities or 0.8% fewer injuries per year. OSHA expects the rule's beneficial effects to exceed these values.

d. Regulatory Alternatives

1. Estimated Additional Costs for Alternative I – Enterprise-Wide Submission

OSHA estimated costs for corporate reporting for three different scope options for this requirement. All of the scope options are for enterprises with five or more establishments, but the options vary with respect to the size of establishment that the enterprise would need to include in the enterprise report.

According to Dun and Bradstreet (2012), there are 28,127 enterprises with five or more establishments subject to OSHA recordkeeping requirements. These enterprises have a total of 584,662 establishments.

Under the first scope option, labeled "Establishments with 1 or more" in Table V-2, enterprises would be required to include in their report all establishments subject to reporting requirements, regardless of the establishments' number of employees. This option would require reporting for 584,662 establishments.

OSHA also examined an option that would require reporting only for establishments with 11 or more employees, labeled "Establishments with 11 or more" in Table V-2. This option would require reporting for 291,425 establishments.

A third option, “Establishments with 20 or more” in Table V-2, would require reporting only for establishment with 20 or more employees. This option would require reporting by 223,592 establishments.

Note that the D&B estimate for the number of establishments with 20 or more employees is close to OSHA’s estimate of establishments with 20 or more employees. The reason the number differs from the 440,000 establishments with 20 or more employees used elsewhere in the PEA is that the D&B estimate is only for establishments that have 20 or more employees and are part of a larger enterprise with five or more establishments subject to recordkeeping requirements.

For all three options, OSHA has assumed that the number of enterprises that would need to provide enterprise-wide reports is 28,127, as noted in Footnote 1 in Table V-2, below. This assumption is necessary because the data OSHA received from Dun and Bradstreet only provided information on the total number of enterprises with five or more establishments required to keep records and on the total number of establishments controlled by these enterprises that had either eleven or more employees or twenty or more employees. OSHA did not receive information on the numbers of enterprises that control only larger establishments, such as establishments employing 11 or more employees or establishments employing 20 or more employees. However, OSHA expects that the number of enterprises with five or more establishments employing 11 or more employees is smaller than 28,127 and that the number of enterprises with five or more establishments employing 20 or more employees is smaller still. As a result, OSHA’s estimates of costs for the second option (“Establishments with 11 or more”) and third option (“Establishments with 20 or more”) are probably overestimates.

OSHA estimates that:

- 1) each establishment will need 10 minutes to transmit its OSHA records to its parent enterprise. The Agency would not require these establishments to transmit their records electronically to the parent enterprise. They would also be allowed to use the mail, telephone, or fax. Note that establishments in the affected NAICS codes are already complying with Part 1904 recordkeeping requirements. Thus, the enterprise-wide reporting requirement would only change their recordkeeping procedures by requiring them to transmit their OSHA log once a year to their parent enterprise, instead of to OSHA.
- 2) the parent enterprise will need 10 minutes per establishment to collate, review, and, if necessary, convert to electronic format the records from each of their affected establishments.
- 3) the parent enterprise will need an additional 10 minutes for the required electronic transmittal of the records to OSHA.

For the purposes of this analysis, OSHA has assumed that no parent enterprise currently consolidates and reviews injury and illness records from establishments it controls. This assumption probably results in a significant overestimate of the costs.

Given the scope alternatives and the estimates outlined above, the costs for each alternative are shown in Table V-2. The highest-cost option is the first option, “Establishments with 1 or more”. The yearly costs for this alternative, in addition to those already in the NPRM, are a total of \$6,688,924.

These costs are calculated by subtracting the number of establishments with reporting costs already included elsewhere in the PEA (223,592 establishments) from the

total number of affected establishments (584,662), resulting in a net of 361,070 establishments. 361,070 establishments multiplied by 10 minutes (1/6 of an hour) of reporting time per establishment multiplied by a wage rate of \$40.04 per hour $[361,070 \times 1/6 \times \$40.04]$ produces a cost of \$2,409,540.

The wage rate of \$40.04 is used because OSHA assumes that a Human Resources Specialist will do the establishment transmittal and the enterprise review and transmittal. In the main cost analysis of the PEA, OSHA noted that in some establishments a bookkeeper might do this sort of work, and in others a health and safety specialist might do it. OSHA welcomes comments on the occupations that would send and receive records at the establishment and enterprise level, and the hourly wage rate for those occupations.

There are also the additional costs of enterprise-level review and submittal of the data to OSHA; the enterprise review cost is calculated by 584,662 establishments multiplied by 10 minutes per establishment multiplied by \$40.04 per hour. This produces a cost of \$3,901,644. The cost of enterprise transmittal to OSHA is \$187,700 (28,127 enterprises multiplied by 10 minutes per enterprise multiplied by \$40.04 per hour).

Finally, in the PEA, OSHA recognizes that a very small percent (1.6 percent) of establishments do not currently comply with OSHA regulations by certifying and reviewing their OSHA records. While the rate of non-compliance may be lower among establishments that are part of large, multi-establishment enterprises, OSHA has used the same 1.6-percent estimate of non-compliance at the establishment level in this analysis. As in the PEA, a wage plus benefit rate of \$65.79 per hour, for an Industrial Production

Manager, is used to determine the cost of certification for those establishments not in compliance. That final additional cost is reported in the last row of Table V-2.

Following the same calculation process, for the second option, “Establishments with 11 or more”, there are almost 300,000 fewer establishments, and the additional cost would be roughly \$4 million less, or \$2,620,851.

For the third option, “Establishments with 20 or more”, all of the establishments with 20 or more employees would already be required to report to OSHA in this NPRM, regardless of the enterprise-wide reporting requirement. Under the enterprise-wide reporting requirement, these establishments would instead report to their parent enterprise, and the only cost incurred would be to that parent enterprise, including the cost of enterprise review and submission.

Table V-2: Additional Costs for Corporate Reporting, Enterprises with Five or More Establishments

	Establishments with 1 or more: Provide enterprise-wide report including all establishments with 1 or more employees	Establishments with 11 or more: Provide enterprise-wide report including all establishments with 11 or more employees	Establishments with 20 or more: Provide enterprise-wide report including all establishments with 20 or more employees
Number of Establishments	584,662	291,425	223,592
Baseline (Number of Establishments Already in the PEA)	223,592	223,592	223,592
Net Number of Establishments Newly Required to Report	361,070	67,833	0

Number of Enterprises [1]	28,127	28,127	28,127
Establishment Reporting and Review Cost [2]	\$2,409,540	\$452,672	\$0 [3]
Enterprise Review Cost [4]	\$3,901,644	\$1,944,776	\$1,492,104
Enterprise Electronic Reporting Cost [5]	\$187,700	\$187,700	\$187,700
Recordkeeping Certification Cost (for establishments that should currently certify but do not)	\$190,038	\$35,702	\$0
Total Incremental Cost of Corporate Reporting	\$6,688,924	\$2,620,851	\$1,679,804

1. Number of enterprises is constant across size categories, per D&B data.
2. Estimated time requirements for establishments: 10 minutes to transmit to the enterprise.
3. For the "Establishments with 20 or more" option, those establishments already incurred review, digitization, and transmittal costs in the PEA.
4. Estimated time requirements for enterprises: 10 minutes to collate, review, and digitize per establishment reporting.
5. 10 minutes to transmit to OSHA at the enterprise level.

2. Benefits of Alternative I – Enterprise-Wide Submission

As stated in the PEA, OSHA believes that the submission of establishment injury and illness data to the controlling enterprise will have benefits by improving the ability of OSHA to identify, target, and remove safety and health hazards by targeting enterprises as well as establishments. In addition, OSHA believes that the submission of data from establishments to their parent enterprises will improve the quality of the information available and lead to increased worker safety.

The resources that reduce workplace injuries and illnesses most effectively are found at the establishment and enterprise level. Submission of establishment data to the enterprise will improve communication and reporting between establishments and enterprises. This will alert enterprise managers to safety and health hazards, allowing safety and health resources within the enterprise to be reallocated in a more efficient manner, improving the enterprise's ability to solve establishment safety and health problems.

As noted above, many injuries and fatalities can be prevented at minimal cost. For example, the costs of greater use of already-purchased personal protective equipment are minimal. In terms of workplace fatalities, Option 1 "Establishments with 1 or more", with an incremental cost of \$6.7 million, would have a net beneficial effect if it averted one additional workplace fatality every year (relative to the rule as proposed). In terms of workplace injuries, Option 1 would have a net beneficial effect if it reduced the number of injuries by an additional 110 per year (or one injury for every 255 enterprises required to participate in corporate reporting). This would represent approximately a 0.00003 percent reduction in the 3 million recordable private-sector injuries each year. Even if the costs of averting fatalities or injuries were 75 percent of the benefits, the proposed alternative would have benefits exceeding the costs if it prevented four additional fatalities or 0.00012% fewer injuries⁵. Obviously, Option 2 ("Establishments with 11 or more") and Option 3 ("Establishments with 20 or more") would have even smaller

⁵ These calculations are based on a VSL of \$8.7 million and an average cost per workplace injury or illness of \$60,000 (Viscusi and Aldy (2003)). In the Option 1 example, one fatality valued at \$8.7 million is approximately 25 percent more than the annual cost of Option 1. The logic is precisely the same for injuries prevented. To arrive at a break-even point of 110 injuries prevented, divide the annual cost of \$6.6 million by \$60,000 per injury.

incremental costs. They would therefore have a net beneficial effect with only very small additional numbers of fatalities averted or injuries prevented (relative to the rule as proposed). Option 2 (“Establishments with 11 or more”) would have a net beneficial effect if it averted one additional occupational fatality every 3.3 years, or reduced the number of occupational injuries by an additional 43 per year (or one injury for every 650 enterprises required to participate in enterprise-wide reporting). If the costs of preventing a fatality were 75 percent of the benefits, the benefits would exceed the costs even if just one fatality every nine months were prevented. Option 3 (“Establishments with 20 or more”) would have a net beneficial effect if it averted one additional fatality every 4.5 years, or reduced the number of injuries by an additional 28 per year (or one injury for every 1,000 enterprises required to participate in enterprise-wide reporting). If the costs of preventing an injury were 75 percent of the benefits, the benefits would still exceed the costs if just 112 injuries per year (or one injury per every 250 enterprises) were prevented by participation in enterprise-wide reporting.

OSHA welcomes public comment on Alternative I.

e. Economic Feasibility

OSHA preliminarily concludes that the proposed rule will be economically feasible. For the quarterly reporting requirement, affecting establishments with 250 or more employees, the average cost per affected establishment will be \$183 per year. For the annual reporting requirement, affecting establishments with 20 or more employees in designated industries, the average cost per affected establishment will be \$9.40 per year. These costs will not affect the economic viability of these establishments.

f. Regulatory Flexibility Certification

The part of the proposed rule requiring quarterly reporting for establishments with 250 or more employees will affect some small firms, according to the definition of small firm used by the Small Business Administration (SBA). In some sectors, such as construction, where SBA's definition only allows relatively smaller firms, there are unlikely to be any firms with 250 or more employees that meet SBA small-business definitions. In other sectors, such as manufacturing, a small minority of SBA-defined small businesses will be subject to this rule. Thus, this part of the proposed rule will affect only a small percentage of all small firms. However, because some small firms will be affected, especially in manufacturing, OSHA has examined the impacts on small businesses of the costs of this rule. OSHA's procedures for assessing the significance of proposed rules on small businesses suggest that costs greater than 1% of revenues or 5% of profits may result in a significant impact on a substantial number of small businesses. To meet this level of significance at an estimated annual average cost of \$183 per affected establishment per year, annual revenues for an establishment with 250 or more employees would have to be less than \$18,300, and annual profits would have to be less than \$3,660. These are extremely unlikely combinations of revenue and profits for firms of this size and would only occur for a very small number of firms in severe financial distress.

The part of the proposed rule requiring annual electronic submission of data from establishments with 20 or more employees in designated industries will also affect some small firms. As stated above, costs greater than 1% of revenues or 5% of profits may result in a significant economic impact on a substantial number of small businesses. To meet this level of significance at an estimated annual average cost of \$9.40 per affected

establishment per year, annual revenues for an establishment with 20 or more employees would have to be less than \$900, and annual profits would have to be less than \$180. These are extremely unlikely combinations of revenue and profits for establishments of this size.

As a result of these considerations, per §605 of the Regulatory Flexibility Act, OSHA proposes to certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. Thus, OSHA has not prepared an initial regulatory flexibility analysis. OSHA is interested in comments on this certification.

VI. OMB Review under the Paperwork Reduction Act of 1995

This proposed rule would revise an existing collection of information, as defined and covered by the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations.

Docket exhibit OSHA 2013-0023-0001 shows examples of user interfaces for the current electronic reporting system associated with the ODI and an expanded interface to collect case-specific data. OSHA currently expects that the user interfaces for the electronic reporting system proposed by this rule would be similar to these user interfaces. Screen shots of this interface can also be viewed on OSHA's website at http://www.osha.gov/recordkeeping/proposed_data_form.html. OSHA invites public comment on these user interfaces, including suggestions on any interface features that would minimize the burden of reporting the required data.

Under Control Number 1218-0176, OSHA currently has OMB approval, under the PRA, to conduct an information collection that requires employers to maintain

information on work-related fatalities, injuries, and illnesses, and to submit this information to OSHA. The proposed rule would also have these requirements.

The proposed rule would amend 29 CFR 1904.41 to add three new electronic reporting requirements for injury and illness information employers are already required to keep under 29 CFR Part 1904. First, OSHA would require establishments that are required to keep injury and illness records under Part 1904, and that had 250 or more employees in the previous year, to submit information from these records to OSHA or OSHA's designee, electronically, on a quarterly basis. Second, OSHA would require establishments that are required to keep injury and illness records under Part 1904, had 20 or more employees in the previous year, and are in certain designated industries to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee on an annual basis. The second submission requirement would replace OSHA's annual illness and injury survey, authorized by the current version of 29 CFR 1904.41. Third, OSHA would require all employers who receive notification from OSHA to electronically submit specified information from their injury and illness records to OSHA or OSHA's designee.

In accordance with 44 U.S.C. 3507(d), OSHA prepared and submitted a revised Information Collection Request (ICR) for this proposed regulation to OMB for review. OSHA solicits comments on the proposed revised collection of information requirements and the estimated burden hours associated with these requirements, including comments on the following items:

- a) whether the proposed collection of information is necessary for the proper performance of OSHA's functions, including whether the information has practical utility;
- b) the accuracy of OSHA's burden estimate (time and cost);
- c) ways to enhance the quality, utility, and clarity of the information collected;
- d) ways to minimize the burden of the collection of information on employers, including the use of automated collection techniques or other forms of information technology, and
- e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about this ICR.

1. Title: 29 CFR Part 1904 Recordkeeping and Reporting Occupational Injuries and Illnesses
2. Number of respondents: OSHA proposes to require establishments that are required to keep injury and illness records under Part 1904, and that had 250 or more employees in the previous year, to submit information from these records to OSHA or OSHA's designee, electronically, on a quarterly basis. There are approximately 38,000 establishments that will be subject to this requirement and that will submit detailed case characteristic data on approximately 900,000 occupational injuries and illnesses per year. OSHA also proposes to require establishments that are required to keep injury and illness records under Part 1904, had 20 or more employees in the previous year, and are in certain

designated industries to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA or OSHA's designee on an annual basis. There are approximately 440,000 establishments that will be subject to this requirement. Finally, OSHA proposes to require all employers who receive notification from OSHA to electronically submit specified information from their injury and illness records to OSHA or OSHA's designee. This requirement will only incur a paperwork burden when the agency implements a notice of collection. For each new data collection conducted under this proposed provision, the Agency will request OMB approval under separate PRA control numbers. OSHA currently uses this process for the ODI data collection conducted under the current §1904.41, which OMB currently approves under Control Number 1218-0209. The total number of respondents to all requirements under Part 1904 is 1,665,374.

3. Frequency of responses: Quarterly; Annually; On occasion.
4. Number of responses: 1,369,245.
5. Average time per response: Time per response varies from 10 minutes for establishments reporting only under 1904.41(a)(2), to multiple hours for large establishments with many recordable injuries and illnesses reporting under 1904.41(a)(1). The average time of response per establishment is 29 minutes.
6. Estimated total burden hours: The proposed change will add an additional 228,664 hours of burden to the recordkeeping rule (Part 1904) and bring the total burden for the entire rule to 3,195,901 hours.

7. Estimated costs (capital-operation and maintenance): There are no capital costs for the proposed information collection.

Members of the public may comment on the paperwork requirements in this proposed regulation by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, OSHA (Regulation Identifier Number (RIN) 1218–AC50), Office of Management and Budget, Room 10235, Washington, DC 20503; telephone: 202-395-6929; fax: 202-395-6881 (these are not toll-free numbers); e-mail: OIRA_submission@omb.eop.gov. Please limit the comments to only the proposed changed provisions of the recordkeeping rule (i.e. proposed §1904.41).

OSHA encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket (OSHA-2013-0023), along with their comments on other parts of the proposed regulation. For instructions on submitting these comments to the docket, see the sections of this Federal Register notice titled “**DATES**” and “**ADDRESSES**”.

Comments submitted in response to this notice are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and dates of birth. To access the docket to read or download comments and other materials related to this paperwork determination, including the complete information collection request (ICR), use the procedures described under the section of this notice titled “**ADDRESSES**”. You may obtain an electronic copy of the complete Information Collection Request (ICR) by going to the website at <http://www.reginfo.gov/public/do/PRAMain>, then select “Department of Labor” under

"Currently Under Review", then click on "submit". This will show all of the Department's ICRs currently under review, including the ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N-3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222; e-mail owen.todd@dol.gov.

OSHA notes that a federal agency cannot (1) conduct or sponsor a collection of information unless OMB approves it under the PRA, and the information collection displays a currently-valid OMB control number, and (2) require a party to respond to a collection of information unless the collection of information displays a currently-valid OMB control number. Also, notwithstanding any other provision of law, no party shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently-valid OMB control number. OSHA will publish a notice of OMB's action when it publishes the final regulation, or, if not approved by then, when OMB authorizes the information collection requirements under the PRA.

VII. Unfunded Mandates

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million.

VIII. Federalism

The proposed rule has been reviewed in accordance with Executive Order 13132 (64 Fed. Reg. 43255 (Aug. 4, 1999)), regarding federalism. Because this rulemaking involves a “regulation” issued under Sections 8 and 24 of the OSH Act, and is not an “occupational safety and health standard” issued under §6 of the OSH Act, the rule will not preempt state law (29 U.S.C. 667(a)). The effect of the proposed rule on states is discussed in section IX. State Plan States.

IX. State Plan States

For the purposes of §18 of the OSH Act (29 U.S.C. 667) and the requirements of 29 CFR 1904.37 and 1952.4, within 6 months after publication of the final OSHA rule, state-plan states must promulgate occupational injury and illness recording and reporting requirements that are substantially identical to those in 29 CFR Part 1904 "Recording and Reporting Occupational Injuries and Illnesses." All other injury and illness recording and reporting requirements (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement) that are promulgated by state-plan states may be more stringent than, or supplemental to, the federal requirements, but, because of the unique nature of the national recordkeeping program, states must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives (29 CFR 1904.37(b)(2)), 29 CFR 1952.4(a)).

There are 27 state plan states and territories. The states and territories that cover private sector employers are Alaska, Arizona, California, Hawaii, Indiana, Iowa,

Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved state plans that apply to state and local government employees only.

X. Public Participation

Because this rulemaking involves a regulation rather than a standard, it is governed by the notice and comment requirements in the Administrative Procedure Act (APA) (5 U.S.C. 553) rather than section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR Part 1911 (both of which only apply to “promulgating, modifying or revoking occupational safety or health standards” (29 CFR 1911.1)). Therefore, the OSH Act requirement to hold an informal public hearing (29 U.S.C. 655(b)(3)) on a proposed rule, when requested, does not apply to this rulemaking.

Section 553(b)(1) of the APA requires the agency to issue a “statement of the time, place, and nature of public rulemaking proceedings” (5 U.S.C. 553(b)(1)). The APA does not specify a minimum period for submitting comments.

a. Public Submissions

OSHA invites comment on all aspects of the proposed rule. OSHA specifically encourages comment on the questions raised in the issues and questions subsection. Interested persons must submit comments by [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The Agency will carefully review and evaluate all comments, information, and data, as well as all other information in the rulemaking record, to determine how to proceed.

You may submit comments in response to this document (1) electronically at <http://www.regulations.gov>, which is the federal e-rulemaking portal; (2) by fax; or (3) by hard copy. All submissions must identify the agency name and the OSHA docket number (Docket No. OSHA-2013-0023) or RIN (RIN No. 1218-AC49) for this rulemaking. You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA docket office (see **ADDRESSES** section). The additional materials must clearly identify your electronic comments by name, date, and docket number, so that OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA docket office at (202) 693-2350 (TTY (877) 889-5627).

b. Access to Docket

Comments in response to this **Federal Register** notice are posted at <http://www.regulations.gov>, the federal e-rulemaking portal. Therefore, OSHA cautions individuals about submitting personal information such as Social Security numbers and birthdates. Although submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and exhibits, including copyrighted material, are available for inspection and copying at the OSHA docket office. Information on using <http://www.regulations.gov> to submit comments and access dockets

is available on that website. Contact the OSHA docket office for information about materials not available through the website and for assistance in using the Internet to locate docket submissions.

Electronic copies of this Federal Register document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, also are available at OSHA's webpage at <http://www.osha.gov>. For specific information about OSHA's Recordkeeping rule, go the Recordkeeping page on OSHA's webpage.

Authority and Signature

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), Section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor's Order No. 41–2012 (77 FR 3912 (Jan. 25, 2012)).

List of Subjects

29 CFR Part 1904

Health statistics, Occupational safety and health, Reporting and recordkeeping requirements, State plans

29 CFR Part 1952

Health statistics, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements, State plans

Signed at Washington, DC. on October 31, 2013

David Michaels

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble, OSHA proposes to amend parts 1904 and 1952 of Chapter XVII of Title 29 as follows:

PART 1904 -- [AMENDED]

1. The authority citation for part 1904 continues to read as follows:

AUTHORITY: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3-2000 (65 FR 50017), and 5 U.S.C. 533.

Subpart E--Reporting Fatality, Injury and Illness Information to the

Government

2. Add an authority citation to Subpart E of 29 CFR part 1904 to read as follows:

AUTHORITY: Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), 5 U.S.C. 553, and Secretary of Labor's Order 1-2012 (77 FR 3912, Jan. 25, 2012).

3. Revise §1904.41 to read as follows:

§ 1904.41 Electronic submission of injury and illness records to OSHA.

(a) Basic requirements—(1) Quarterly electronic submission of Part 1904 records by establishments with 250 or more employees. If your establishment is required to keep records under Part 1904 and had 250 or more employees (including full-time, part-time, temporary, and seasonal workers) at any time during the previous calendar year, you

must electronically send to OSHA or OSHA's designee, on a quarterly basis, all of the information from the records that you keep under Part 1904.

(i) The data for injuries, illnesses, and fatalities recorded during the period of January through March must be submitted no later than April 30.

(ii) The data for injuries, illnesses, and fatalities recorded during the period of April through June must be submitted no later than July 31.

(iii) The data for injuries, illnesses, and fatalities recorded during the period of July through September must be submitted no later than October 31.

(iv) The data for injuries, illnesses, and fatalities recorded during the period of October through December must be submitted no later than January 31.

(v) The summary data from OSHA Form 300A must be submitted no later than March 2 of the year after the calendar year covered by the form.

(2) Annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries. If your establishment had 20 or more employees (including full-time, part-time, temporary, and seasonal workers) at any time during the previous calendar year, and is classified in any of the industries listed in Appendix A to Subpart E of Part 1904, you must electronically send to OSHA or OSHA's designee, once a year, the information from your completed annual summary form (Form 300A). The information must be submitted no later than March 2 of the year after the calendar year covered by the form.

(3) Electronic submission of Part 1904 records upon notification. Upon notification, you must electronically send to OSHA or OSHA's designee the requested information, at the specified time interval, from the records that you keep under Part 1904.

(b) Implementation—(1) Does every employer have to send data to OSHA? No, in any given year, some employers will have to send data to OSHA, and some employers will not. If your establishment is required to keep records under Part 1904 and had 250 or more employees in the previous calendar year, you must submit all of your Part 1904 data to OSHA on a quarterly basis, without notification from OSHA. Also, if your establishment is classified in any of the industries listed in Appendix A to Subpart E of Part 1904 and had 20 or more employees in the previous calendar year, you must submit the information from the annual summary form (Form 300A) to OSHA once a year, without notification from OSHA. This information must be submitted no later than March 2 of the year after the calendar year covered by the form (for example, no later than March 2, 2012, for the 2011 annual summary form). Otherwise, you must only submit injury and illness data to OSHA if you are notified to do so for an individual data collection.

(2) How will I be notified that I have to submit the data? Employers required to submit data on a quarterly basis (that is, employers that are required to keep records under Part 1904 and had 250 or more employees in the previous calendar year) will not be notified. Employers required to submit data once a year (that is, employers, in designated industries, that had 20 or more employees in the previous calendar year) will also not be notified. Employers required to submit data as part of an individual data collection will be notified by mail. OSHA will also announce individual data collections through publication in the Federal Register and the OSHA newsletter, and announcements on the OSHA website.

(3) How often do I have to submit the data? Establishments that are required to keep records under Part 1904 and had 250 or more employees in the previous calendar year must submit their Form 300 and Form 301 data on a quarterly basis and their annual summary data, from Form 300A, on an annual basis. Establishments that are in designated industries and had 20 or more employees in the previous calendar year must submit their Form 300A data once a year. Establishments that receive a notification for an individual data collection must submit their data according to the frequency specified in the notification.

(4) How do I submit the data? Establishments must submit their data electronically. OSHA will provide a secure website for the electronic submission of data. For individual data collections, OSHA will include the website's location in the notification for the data collection. The website will allow for both direct data entry and submission of data through a batch file upload, as appropriate.

(5) Do I have to submit data if I am normally exempt from keeping OSHA injury and illness records? If you are exempt from keeping injury and illness records under §1904.1 and/or §1904.2 of this part, you will have to submit data only if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, you must keep the injury and illness records required by Part 1904 and submit data as directed.

(6) Do I have to submit data if I am located in a State-Plan State? The requirements for submitting data apply to all employers, including employers in State-Plan States.

4. Add Appendix A to Subpart E of Part 1904 to read as follows:

Appendix A to Subpart E of Part 1904 – Designated industries for annual electronic submission of OSHA annual summary form (Form 300A) by establishments with 20 or more employees in designated industries.

<u>NAICS</u>	<u>Industry</u>
11	Agriculture, Forestry, Fishing and Hunting
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale Trade
4413	Automotive Parts, Accessories, and Tire Stores
4421	Furniture Stores
4422	Home Furnishings Stores
4441	Building Material and Supplies Dealers
4442	Lawn and Garden Equipment and Supplies Stores
4451	Grocery Stores
4521	Department Stores
4529	Other General Merchandise Stores
4533	Used Merchandise Stores
4543	Direct Selling Establishments
4811	Scheduled Air Transportation
4832	Inland Water Transportation
4841	General Freight Trucking
4842	Specialized Freight Trucking

4855	Charter Bus Industry
4871	Scenic and Sightseeing Transportation, Land
4872	Scenic and Sightseeing Transportation, Water
4881	Support Activities for Air Transportation
4882	Support Activities for Rail Transportation
4883	Support Activities for Water Transportation
4884	Support Activities for Road Transportation
4889	Other Support Activities for Transportation
4921	Couriers
4922	Local Messengers and Local Delivery
4931	Warehousing and Storage
5152	Cable and Other Subscription Programming
5311	Lessors of Real Estate
5321	Automotive Equipment Rental and Leasing
5322	Consumer Goods Rental
5323	General Rental Centers
5617	Services to Buildings and Dwellings
5621	Waste Collection
5622	Waste Treatment and Disposal
5629	Remediation and Other Waste Management Services
6216	Home Health Care Services
6221	General Medical and Surgical Hospitals
6222	Psychiatric and Substance Abuse Hospitals

6223	Specialty (except Psychiatric and Substance Abuse) Hospitals
6231	Nursing Care Facilities
6232	Residential Mental Retardation, Mental Health and Substance Abuse Facilities
6233	Community Care Facilities for the Elderly
6239	Other Residential Care Facilities
6243	Vocational Rehabilitation Services
7112	Spectator Sports
7131	Amusement Parks and Arcades
7132	Gambling Industries
7211	Traveler Accommodation
8113	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance
8123	Drycleaning and Laundry Services

PART 1952 -- [AMENDED]

5. The authority citation for part 1952 is revised to read as follows:

AUTHORITY: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; Secretary of
Labor's Order 1-2012 (77 FR 3912, Jan. 25, 2012)

5. In § 1952.4, revise paragraph (d) to read as follows:

§1952.4 Injury and illness recording and reporting requirements.

* * * * *

(d) As provided in section 18(c)(7) of the Act, State-Plan States must adopt requirements identical to those in 29 CFR 1904.41 in their recordkeeping and reporting regulations as enforceable State requirements. The data collected by OSHA as authorized by §1904.41 will be made available to the State Plan States. Nothing in any State plan shall affect the duties of employers to comply with §1904.41.

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